INTRO TO ADMINISTRATIVE LAW

Honorable Barry E. Moscowitz, ALJ
Chief Administrative Law Judge
(Trenton)

Paul P. Josephson, Esq.
Duane Morris LLP
(Marlton)

Andrew W. Li, Esq.
Comegno Law Group
(Moorestown)

Arsen Zartarian, Esq.
Cleary Giacobbe Alfieri Jacobs, LLC
(Oakland)

MI1429.25

This page intentionally left blank

ADMINISTRATIVE LAW

PRACTICAL SKILLS SERIES

2011 Edition Written by

Hon. Jeff S. Masin, Administrative Law Judge and Deputy Director, O.A.L.

Patricia Prunty, Esq., Assistant Director, O.A.L.

Mark Stanton, Esq., Manager, O.A.L.

THE NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION
One Constitution Square, New Brunswick, New Jersey 08901-1520
(732) 249-5100

®

®

NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION
CELEBRATING OVER 40 YEARS OF SERVICE TO THE BENCH AND BAR

The New Jersey Institute for Continuing Legal Education was created in 1962 to help lawyers and judges increase their general professional competence, keep abreast of developments in the law, and become more proficient in selected areas of practice. Since 1962, ICLE has served the educational needs of the New Jersey bench and bar and continually strives to respond to their many and varied concerns.

A non-profit, completely self-supporting organization, ICLE is the joint venture of the New Jersey State Bar Association, Rutgers - The State University of New Jersey, and Seton Hall University. Representing a merger of the practicing bar and the academic community, the Institute is governed by an autonomous Board of Trustees, which includes representatives of the State Bar Association, deans of the law schools and officers of the participating universities.

The Institute presents more than 230 seminars each year throughout the State, offers CDs of seminars, markets software programs especially designed for the practicing attorney, and publishes comprehensive practice manuals and lecture handbooks. Its programs and publications must be financially self-supporting since ICLE is not subsidized in any way. The professional staff of attorneys and administrators, aided by a dedicated support staff, is headquartered at the New Jersey Law Center in New Brunswick, along with the State Bar Association, the State Bar Foundation and IOLTA.

The ingredients that contribute most to the stature of the Institute are the talent, time and effort expended by the very best of New Jersey attorneys, representing every field of specialization and every type of practice. The voluntary participation of practicing lawyers and judges as ICLE lecturers, authors, and advisors is appreciated and encouraged, for without their assistance, high quality continuing legal education would not be possible.

The Institute welcomes this opportunity to serve you.

TABLE OF CONTENTS

I. INTRODUCTION TO ADMINISTRATIVE LAW

The actions of administrative agencies impact the public in a variety of areas, from driving a motor vehicle to construction in coastal areas, from operating a rooming and boarding home to racing a horse, from issuance of a license to sell alcoholic beverages to practice medicine.

Administrative law concerns the creation of , and delegation of power to, administrative agencies, the exercise of these powers through rulemaking and adjudicaton, and judicial review of those actions. It is procedural rather than substantive, that is, it governs the way an agency may perform those functions.

A. STATE DEPARTMENTS

1. Organization.

The modern system of administrative law in New Jersey has its genesis in the 1947 Constitution. One of the main objectives of the constitutional Convention was the creation of a strong executive branch. The framers of the 1947 Constitution agreed that to strengthen the executive branch, the departments of State government should be limited to twenty and that the Governor should have the power to appoint the various department heads. N.J. Const. art. V, §4, ¶1. There was a split of opinion, however, as to whether each department should be headed by a single executive or whether the Constitution should have sufficient flexibility to permit multi-member boards to head departments. V *Proceedings of the Constitutional Convention of 1947,* 19. A compromise was reached on this issue whereby the Constitution permitted the Legislature the discretion to create multi-member boards to head departments in State government.

There are presently sixteen executive departments in State government, two less than the maximum permitted by the Constitution. These departments are listed below together with an indication of the statutes which created them and the boards or principal officers who head them. (Divisions within Departments will be indicated if those Divisions are responsible for a significant volume of contested cases.)

Department of Agriculture

Created by N.J.S.A. 4:1-1 and headed by the State Board of Agriculture, its principal executive officer is the Secretary of Agriculture. This Department, one of the smallest in State government, conducts a variety of regulatory, service and promotional activities including programs for animal and plant disease control, the production, sale and pricing of milk and quality controls in the market place.

Department of Banking and Insurance

The Department of Banking and Insurance, headed by a Commissioner, is responsible for the supervision and regulation of state-chartered commercial and savings banks, consumer credit institutions, and mortgage bankers and brokers. It licenses insurance brokers and agents; acts upon applications from insurance companies to do business in the state; and regulates their rates. Also within this Department is the Real Estate Commission which regulates the real estate industry. N.J.S.A. 17:1B-1 and N.J.S.A. 17:1C-2

Department of Children and Families

The Department of Children and Families (DCF) is New Jersey's state child welfare agency, tasked with strengthening families and achieving: safety, well-being and permanency for all New Jersey's children.

Department of Community Affairs

Established by N.J.S.A. 52:27D-1 and headed by a Commissioner of Community Affairs, it offers a wide range of financial and technical assistance programs and services to the state's municipalities, counties, various social service agencies, and individual citizens. The latter are most typically served through various Bureaus within the Division of Housing which has jurisdiction over hotels and multiple dwellings, N.J.S.A. 55:13A-1, rooming and boarding homes, N.J.S.A. 55:13B-1 and relocation assistance, N.J.S.A. 20:4-1. In addition, the Department includes quasi-independent agencies: the Hackensack Meadowlands Development Commission; New Jersey Housing and Mortgage Finance Agency; the Council on Affordable Housing and the State Planning Commission.

Department of Corrections

Created by N.J.S.A. 30:1B-1 and headed by a Commissioner of Corrections, this Department operates state prisons, correctional institutions, a facility for sex offenders and youth correctional facilities. It also operates residential group centers, adult diagnostic and treatment centers, community-based units, district parole offices, and numerous satellite facilities.

Department of Education

Established by N.J.S.A. 18A:4-1 and headed by a State Board of Education, its principal executive officer is the Commissioner of Education. This Department is generally responsible for supervising public elementary and secondary education in the State. The Office of Special Education Programs implements the federal Individuals with Disabilities Education Act and state law governing special education to ensure that pupils with disabilities in New Jersey receive full educational opportunities.

Department of Environmental Protection

Created by N.J.S.A. 13:1D-1 and headed by a Commissioner of Environmental Protection, this Department is responsible for conserving the state's natural resources, monitoring its air and water standards, promoting the availability of energy at reasonable prices, and managing its park and recreation areas. Through its review and issuance of permits, it controls the development of much of the state, particularly in flood plains, wetlands, coastal zones, and other areas of delicate ecological balance.

Department of Health and Senior Services

The Department of Health became the Department of Health and Senior Services, established by N.J.S.A. 26:1A-2 and headed by a Commissioner, oversees all hospitals in the state and is a conduit for state and federal financial assistance to these hospitals, local health departments, and other community health agencies. The Department conducts programs to prevent or control communicable diseases, studies the delivery of health services, and conducts case finding, monitoring, and control programs. It also oversees some 20 programs for senior citizens.

Department of Human Services

Created by N.J.S.A. 30:1-2 and headed by a Commissioner of Human Services, this Department is the largest in State government. It provides social services for more than a million persons. The department operates psychiatric hospitals; institutions for the mentally retarded, emotionally disturbed, or neurologically impaired; a geriatric center; homes for elderly military veterans, and a forensic hospital. Through the Division of Family Development, it administers the welfare program and through the Division of Medical Assistance and Health Services, the Medicaid program.

Department of Labor and Workforce Development

Established by N.J.S.A. 34:1A-1.1 and headed by a Commissioner of Labor, this Department promotes economic activity and monitors labor standards and labor relations. It administers programs, most of them supported by federal funds, in unemployment compensation, disability insurance, and workers' compensation. It administers other federally subsidized programs in training, employment, work incentives, and vocational rehabilitation. The Department also enforces child labor laws and has allocated to it the Public Employment Relations Commission.

Department of Law and Public Safety

Established by N.J.S.A. 52:17B-1 and headed by the Attorney General, this Department is a legal resource for the governor and executive departments and a statewide law enforcement agency. Major divisions include the Division of State Police, the Division on Civil Rights, N.J.S.A. 10:5-1, the Division of Alcoholic Beverage Control, N.J.S.A. 33:1-3 and the Division of Consumer Affairs,

N.J.S.A. 52:17B-120. Within the Division of Consumer Affairs are the various professional boards and commissions, N.J.S.A. 52:17B-125, and the Bureau of Securities, N.J.S.A. 52:17B-126.

Department of Military and Veterans Affairs

Established by N.J.S.A. 38A:3-1 and headed by an Adjutant General, this Department's mission is military preparedness, but it also provides the State with a trained equipped force with which to respond to natural disasters and domestic emergencies. The principal component of the department is the Army National Guard, which has units stationed in armories throughout the state.

Department of the Public Advocate

The Department of Public Advocate provides consumer protection and advocacy on behalf of the indigent, the elderly, children, and other persons unable to protect themselves as individuals or a class. Additionally, the Department consolidated the diffuse functions of ombudspersons, ratepayer advocate, and other functions.

Department of State

Created by N.J.S.A. 52:16A-1 and headed by the Secretary of State, this Department is the record keeping agency of State government. It is also charged with the administration of many cultural activities. Within the Department's cultural organization are the Divisions of the State Museum and the New Jersey Historical Commission, the State Council on the Arts, and the Office of Ethnic Affairs.

Department of Transportation

Established by N.J.S.A. 27:1A-2, this Department is headed by a Commissioner of Transportation overseeing highway-related programs and the preservation and improvement of rail and bus transportation. New Jersey Transit Corporation is allocated to the Department of Transportation. The Department also includes the Motor Vehicle Commission.

Department of Treasury

Created by N.J.S.A. 52:18A-1 and headed by the Treasurer, this Department oversees the collection of State taxes and the budgeting and spending of all State money. Its major activities are central money management, budgeting, data processing, employee benefit programs, purchase and property management, construction oversight, revenue collection and capital planning. Through its Division of Pensions, N.J.S.A. 52:18A-95, it manages the various public pension systems.

Several independent agencies are in, but not of, the Department of Treasury: the Board of Public Utilities which has jurisdiction over telephone, electric, and gas rates and services; the Division of Rate Counsel, which represents the public in proceedings before the Board of Public Utilities; the Office of Administrative Law, which conducts contested cases for State agencies and

manages the *New Jersey Register* and New Jersey Administrative Code; and the Office of Public Defender which provides legal representation for indigent adults charged with indictable offenses and juveniles facing institutional commitment.

2. Functions

The departments in the Executive Branch are the means by which the Governor discharges his or her constitutional responsibility to "take care that the laws be faithfully executed." N.J. Const. art. V, § 1, ¶ 11. In implementing the laws of the State, the officials within each Department are responsible to their respective agency heads. In turn, they are responsible to the governor who is ultimately accountable to the electorate.

The actions of the State departments, when applying the laws entrusted to them, are not solely executive in nature but often share legislative or judicial qualities. When an agency acts, under its statutory mandate, to determine the specific rights or obligations of particular individuals before it, its action "partakes of the judicial, its exercise is styled `quasi-judicial.'" *Handlon v. Town of Belleville*, 4 N.J. 99, 104-05 (1950). When a department gives specific form and content to a broad statutory provision by adopting administrative rules, it is said to be acting in its quasi-legislative capacity.

Both federal and state courts have consistently recognized that administrative agencies are empowered to effectuate their regulatory policies either through rulemaking or adjudication. Further, agencies necessarily possess great flexibility and discretion in selecting the form of proceeding best suited to achieving their regulatory aims. *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 294-95, 94 S.Ct. 1757, 40 L.Ed.2d 134 (1974); *Texter v. Department of Human Services*, 88 N.J. 376, 383-85 (1982); *Bally Mfg. Corp. v. N.J. Casino Control Comm'n*, 85 N.J. 325, 335-41 (1981) (Handler, J., concurring). As the Supreme Court of the United States explained in *Securities and Exchange Comm'n v. Chenery Corp.*, 332 U.S. 194, 202, 67 S.Ct. 1575, 1580, 91 L.Ed. 1995, 2002 (1947):

> The function of filling in the interstices of [an enabling act] should be performed, as much as possible, through th[e] quasi-legislative promulgation of rules to be applied in the future. But any rigid requirement to that effect would make the administrative process inflexible and incapable of dealing with many of the specialized problems which arise. * * * Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order.

If a department acts in its quasi-judicial or adjudicatory capacity, it must provide those procedural safeguards generally attendant upon judicial proceedings. Normally, these requirements include findings of fact based upon evidence adduced at a hearing, as well as cross-examination and

rebuttal. Finally, the agency head is bound to consider only the record of evidence and argument and not be influenced by extraneous considerations which might be appropriate in the purely executive but not in the quasi-judicial field of activity. *In re Plainfield Union Water Co.*, 11 N.J. 382, 392-93 (1953).

Legislative power is distinguished from judicial power in that it operates basically in the future rather than on past transactions or circumstances and involves unspecified parties rather than particular individuals. 1 Davis, *Administrative Law,* § 501 (1968). When a department "acts legislatively, it should conduct its proceedings as does a legislature. The strictures of judicial procedure are wholly unrelated and unadapted to the promulgation of rules and regulations." *Consolidation Coal Co., et al. v. Kandle, et al.*, 105 N.J. Super. 104, 113 (App. Div. 1969), *aff'd*, 54 N.J. 11 (1969); *Abramson, et al. v. Farrell*, 122 N.J. Super. 30 (App. Div. 1972). If a legislative hearing is held to receive comment on a proposed administrative rule, it is a non-adversarial proceeding, which seeks to devise broad policy applicable to the public generally, rather than to individual parties. Unlike quasi-judicial proceedings, there is no right to confrontation and cross-examination nor is there a requirement that findings of fact be made to support the various provisions of the administrative regulations. *Wilson v. Long Branch,* 27 N.J. 360 (1958); *Consolidation Coal Co., et al. v. Kandle, et al.*, 105 N.J. Super. 104 (App. Div. 1969), *aff'd*, 54 N.J. 11 (1969).

3. Administrative Procedure Act

The 1947 Constitution of New Jersey provided:

> No rule or regulation made by any department, officer, agency or authority of this State, except such as relates to the organization or internal management of the State government or a part thereof, shall take effect until it is filed either with the Secretary of State or in such manner as may be required by law. The Legislature shall provide for the prompt publication of such rules and regulations.

Art. 5, § 4, ¶ 6.

It was not until 1968, however, that the Legislature enacted an Administrative Procedure Act (hereafter APA). P.L. 1968, c. 410, N.J.S.A. 52:14B-1 *et seq.*, eff. September 1, 1969. This Act provides a procedural structure for both the quasi-judicial activities (hearings) as well as the quasi-legislative functions (rule making) of State agencies. The APA defines the State agencies subject to its requirements and those "contested cases" or adjudicatory proceedings and "administrative rules" which fall within its purview. N.J.S.A. 52:14B-1(a), (b) and (e).

a. Rulemaking

If an agency intends to exercise its quasi-legislative powers through the adoption, amendment or repeal of any rule, the APA requires that it give notice of its intended action. This notice is to include a statement of the terms or substances of its proposed action, as well as a variety

of other statements including economic and social impact statements, which are discussed in detail later in these materials. The agency must also indicate the time, place and manner in which interested persons may submit their views.

This notice is to be mailed to certain individuals, published in the *New Jersey Register*, provided to the press, posted on the agency's website, and additionally publicized in a manner reasonably calculated to inform those persons most likely to be affected by or interested in the proposal. The agency must afford all interested parties a reasonable opportunity to submit data, views or arguments, orally or in writing, and the agency is to consider fully all written and oral submissions respecting the proposed rule.

The administrative rules, as proposed and finally adopted, are published in the *New Jersey Register*. The effective rules adopted by each agency are codified and published in the New Jersey Administrative Code. N.J.S.A. 52:14B-4 and 7.

The APA also provides a truncated procedure when there is "an imminent peril to the public health, safety or welfare." N.J.S.A. 52:14B-4(a)(1) and (2); (c). The rulemaking process is explained in detail in Section V.

b. Adjudication of Contested Cases

With regard to the exercise of an agency's quasi-judicial power, the APA requires that in "contested cases," all parties are to be afforded an opportunity for a hearing after reasonable notice. The notice provided by the State agency is to include, at a minimum:

1. A statement of the time, place and nature of the hearing;

2. A statement of the legal authority and jurisdiction under which the hearing is to be held;

3. A reference to the particular sections of the statutes and rules involved; and

4. A short and plain statement of the matters asserted.

N.J.S.A. 52:14B-9(b)

Unless prescribed by law, the agency may place on any party the responsibility of requesting a hearing. N.J.S.A. 52:14B-9(g). Upon receiving notice and, when appropriate, requesting a hearing, the parties are to have the opportunity to appear, respond and present evidence and argument on all issues involved. Oral proceedings are to be transcribed upon request of any party and at their expense. Findings of fact are to be based exclusively on the evidence and on matters officially noticed. Informal disposition of a contested case may be made by stipulation, agreed settlement or consent order unless such action is precluded by law, N.J.S.A. 52:14B-9(c), (d), (e) and (f).

The APA establishes further requirements governing the conduct of contested cases through N.J.S.A. 52:14B-10. As originally enacted, the APA provided for hearing of contested cases by an

officer designated to hear cases on behalf of the agency head who produced a "recommended report and decision containing recommended findings of fact and conclusions of law" which the agency head could adopt, reject or modify. N.J.S.A. 52:14B-10(c). Some of these "hearers" were full-time employees of the agencies. Others were attorneys or other specialists who heard cases on a part-time basis. Furthermore, each agency developed procedures to govern the conduct of its contested cases.

As the volume of contested cases steadily increased, there developed problems of delay, appearance of agency bias, and confusion generated by diverse agency practice. These problems led to a call for the creation of an independent State agency staffed by professionals who would hear contested cases for the State agencies in the Executive Branch of Government.

B. THE OFFICE OF ADMINISTRATIVE LAW

1. Creation

In 1978, the Legislature created the Office of Administrative Law (hereafter OAL), a central independent agency staffed by professionals whose major function was the conduct of administrative hearings. P.L. 1978, c. 67, N.J.S.A. 52:14F-1 *et seq.*, eff. January 6, 1979. The establishment of OAL was the "culmination of years of effort to achieve fundamental reforms affecting the administrative agencies of state government." *Unemployed-Employed Council of N.J. Inc. v. Horn*, 85 N.J. 646, 649 (1981). In addition to its primary function, the newly created OAL was given responsibilities respecting the rulemaking activities of State agencies. N.J.S.A. 52:14B-7, N.J.S.A. 52:14F-5(e) and (f).

The major purpose of the OAL Act was "to bring impartiality and objectivity to agency hearings and ultimately to achieve higher levels of fairness in administrative adjudications." *Unemployed-Employed Council*, 85 N.J. at 650. In addition to promoting due process, it was envisioned that the creation of OAL would expedite the processing of contested cases and, to the extent possible, reduce the cost of administrative adjudication both to the litigants and to the State. These objectives were to be achieved by replacing full-time and part-time hearing examiners, employed by State agencies, with an independent corps of full-time State employees allocated to the executive branch and designated "Administrative Law Judges." Pursuant to the legislative scheme, administrative law judges, who were not subject to supervision of the agency heads, would conduct the hearings in contested cases and issue an initial decision.

2. Hearing Process

The agency head determines whether a case is contested, N.J.S.A. 52:14F-7(a), applying the standard set forth in N.J.S.A. 52:14B-2 and N.J.A.C. 1:1-2.1.

All contested cases must be heard by an administrative law judge, N.J.S.A. 52:14B-10(c) except "where the head of the agency, a commissioner or several commissioners, are required to

conduct, or determine to conduct the hearing directly and individually." N.J.S.A. 52:14F-8(b). Additionally, contested cases before the State Board of Parole; the Public Employment Relations Commission; the Division of Workers' Compensation; the Division of Tax Appeals; or any agency not within N.J.S.A. 52:14B-2(a) are exempt from the requirement that administrative law judges conduct hearings, although those agencies can specifically request assignment of an administrative law judge to a matter. N.J.S.A. 52:14F-8(a). Hearings of contested unemployment compensation cases within the Division of Unemployment and Temporary Disability by the Appeals Tribunal and the Board of Review are exempt from this requirement. *Unemployed-Employed Council of New Jersey, Inc. v. Horn*, 85 N.J. 646 (1981).

Administrative law judges are appointed by the Governor with the consent of the Senate. The initial appointment is for a one-year term with reappointment by the Governor for a four-year term. Subsequent reappointments are for five-year terms. N.J.S.A. 52:14F-4. Administrative law judges must have been attorneys-at-law of New Jersey for at least 5 years. N.J.S.A. 52:14F- 5*l*.

The administrative law judge issues a recommended report and decision denominated "Initial Decision." The agency head may "adopt, reject or modify" the decision of the administrative law judge. N.J.S.A. 52:14B-10(c). However, the agency head may not reject or modify findings of fact as to issues of credibility of lay witness testimony unless it first determines from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. *Id.* If the agency head fails to act on the decision of the administrative law judge within 45 days (or failed to have that period extended), the initial decision of the ALJ becomes the final decision of the agency head. N.J.S.A. 52:14B-10(c).

In order to eliminate the confusion caused by the diverse procedural rules adopted by the various State agencies, the OAL Director is authorized to

> [d]evelop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether a summary or plenary hearing should be held to regulate the conduct of contested cases and the rendering of administrative adjudications.

N.J.S.A. 52:14F-5(e).

The OAL has promulgated Uniform Administrative Procedure Rules at N.J.A.C. 1:1 which govern the conduct of all contested case adjudications, whether or not the hearing is before the OAL. Through the development of uniform rules of procedure, a contested case arising in the Department of Education is conducted in a manner similar to a case originating in the Department of Environmental Protection or the Department of Community Affairs. The establishment of a simplified, uniform procedure is a means to expedite hearings and reduce costs, while at the same time making the administrative process more accessible and understandable to the average citizen.

Additionally, in response to the unique needs of particular types of cases or federal or state requirements, the OAL also promulgated special rules. For example, lemon law, special education and motor vehicle cases are subject to special rules. If a special rule conflicts with the Uniform Administrative Procedure Rules, the special rule controls. If a process is not covered in the special rules, then the Uniform Administrative Procedure Rules govern.

Prior to the creation of the OAL, each state agency had its own procedures for the conduct of hearings. In order to accomplish the legislative goal of achieving uniformity in the administrative hearing process, the rules of the OAL provide that "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. 52:14F-5(e)." N.J.A.C. 1:1-1.1(c).

3. Relationship to State Agencies

With the establishment of the OAL in 1978, New Jersey became one of the first states to have an independent Office of Administrative Law. However, as the Supreme Court of New Jersey held in *In re Uniform Adm'n Procedure Rules*, 90 N.J. 85 (1982), this innovative legislative scheme did not alter the basic regulatory authority of the various State agencies. The Court found:

> In creating an independent Office of Administrative Law, the Legislature intended no alteration of the regulatory authority or basic decisional powers of administrative agencies. The "independence" of which we speak when describing the OAL is directed to that office's ability to conduct administrative hearings in order to make recommended factual findings and determinations in contested cases. Administrative law judges have no independent decisional authority. Any attempt to exercise such authority would constitute a serious encroachment upon an agency's ability to exercise its statutory jurisdiction and discharge its regulatory responsibilities. *Cf. Texter*, 88 N.J. at 383-86 (recognizing the expertise of administrative agencies in complicated regulatory fields). As previously noted, in the act that established the OAL, the Legislature expressly reserved to the agency heads the power to decide contested cases. *N.J.S.A.* 52:14F-7. That power is a necessary appendage of the agency's regulatory arsenal. Administrative agencies cannot be expected to cover the course of administrative regulation on one leg. They need both their rulemaking and adjudicatory powers to perform their duties properly.

In re Uniform Adm'n Procedure Rules, 90 N.J. at 94.

Therefore, although the OAL Act brought significant changes to the process of administrative law in New Jersey, it did not alter the basic regulatory responsibilities of State agencies. Contested cases still originate in the individual State agencies and those State agencies are still entrusted with authority to render final decisions in these cases. The Legislature has reserved final decisional authority to the agency heads since it is the agencies, which have "statutory jurisdiction to set and enforce regulatory policy." Agencies must be free to establish and implement

policy both through the adoption of rules and the adjudication of contested cases. *In re Uniform Adm'n Procedure Rules*, 90 N.J. at 96.

II. OVERVIEW OF A CONTESTED CASE

A. INITIATING THE CONTESTED CASE

1. Definition

A "contested case" is defined as a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests after an opportunity for an agency hearing." N.J.S.A. 52:14B-2(b). Excluded from the definition of "contested case" are those proceedings in the Division of Taxation, Department of the Treasury, which are reviewable *de novo* by the Tax Court. With the exception of N.J.S.A. 52:14B-11, the Administrative Procedure Act does not create a substantive right to a hearing; the APA simply provides the procedural structure for that hearing where an individual otherwise has a constitutional or statutory right to a hearing. *Little Falls Tp. v. Bardin*, 173 N.J. Super. 397 (App. Div. 1979), cert.denied, 82 N.J. 286 (1980); *Township of Cedar Grove v. Sheridan*, 209 N.J. Super. 267 (App. Div. 1986).

In contrast, N.J.S.A. 52:14B-11 provides that an agency may not revoke or refuse to renew a license unless the licensee is afforded "an opportunity for hearing in conformity with the provisions of this act applicable to contested case." However, this provision is inapplicable:

1) where a statute provides that an agency is not required to grant a hearing in regard to revocation, suspension or refusal to renew a license;

2) where the agency is required by law to revoke, suspend or refuse to renew a license, without exercising any discretion, on the basis of a judgment of a court of competent jurisdiction; or

3) where the suspension or refusal to renew is based solely upon failure of the licensee to maintain insurance coverage as required by any law or regulation.

The New Jersey Uniform Administrative Procedure Rules contain the same definition of a contested case as that in the APA. N.J.A.C. 1:1-2.1 distills the decisional law on whether particular proceedings constitute contested cases and further describes the nature of a contested case as one where the required hearing is pre-eminently adjudicatory and judicial in nature and not simply informational or intended to provide a forum for the expression of public sentiment on proposed agency action. The required hearing must result in adjudication concerning the rights of specific parties.

In order to qualify for a contested case hearing, four factors must be present: 1) a constitutional or statutory right to a hearing; 2) state agency jurisdiction to enter a final determination; 3) a determination concerning parties' legal rights, duties, obligations, privileges, benefits or other legal relations; and 4) specific parties, rather than a large segment of the general public.

First, numerous statutes provide a right to a hearing, often specifically referring to the Administrative Procedure Act or the Office of Administrative Law. In such instances, a determination that the first prong has been satisfied is relatively straightforward. A reference to the Administrative Procedure Act or the OAL is not essential, particularly if the statute predates the creation of the OAL or enactment of the Administrative Procedure Act. The determination that a hearing is constitutionally required is resolved through application of the three-pronged test set forth in *Matthews v. Eldridge,* 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed 2d 18 (1976).

Second, state agency includes the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments, except the offices of the Governor. It does not include county, municipal, or other local agencies. N.J.S.A. 52:14B-2.

Third, the determination that a state agency has jurisdiction to render a decision is usually clearcut. The requirement that the hearing will result in an adjudication concerning rights, duties, obligations, benefits or legal relations mandates that the hearing be adjudicatory and judicial in nature, not informational or intended as a forum for the expression of public opinion, such as a hearing regarding a proposed agency rule.

Finally, the parties must be specific. Thus, in *Public Interest Research Group v. State*, 152 N.J. Super. 191 (App. Div.), *certif. denied*, 75 N.J. 538 (1977), the court considered the appeal of certain environmental groups who objected to the issuance of a permit for the construction of a nuclear plant for generation of electrical power. The objectors argued that the issuance of the permit was procedurally flawed since they had been denied a trial-type adversarial hearing. The court rejected this argument, concluding that a full adversary trial, under the APA, is reserved for those cases in which the legal rights and duties of "specific parties" are at issue:

> Since the objectors-appellants have no "particularized property rights or other special interests" which can be affected by the administrative determination, they are not entitled to a true adversary hearing either on a constitutional due process basis or as a matter of fundamental fairness and administrative due process.

152 N.J. Super. 205.

Additionally, APA due process protections have been required even absent a statutory or constitutional right to a hearing in order to protect important interests. *See, J.E. (Mr. and Mrs.) on behalf of G.E. v. Dept. of Human Services*, 131 N.J. 149 (1993) requiring a trial type hearing before the OAL regarding placement of a developmentally disabled individual; and *In re Allegations of Sexual Abuse at East Park High School*, 314 N.J. Super. 149 (App. Div 1998) and *New Jersey Division of Youth and Family Services v. M.R.*, 314 N.J. Super. 390 (App. Div. 1998) requiring an OAL hearing regarding a substantiation of abuse finding by the Division of Youth and Family Services.

2. Determination as to Existence of Contested Cases.

Reflecting the legislative determination that the agency head determines whether a case is contested., N.J.S.A. 52:14F-7(a), N.J.A.C. 1:1-3.2(a) provides that the Office of Administrative Law only acquires jurisdiction over a matter after it has been determined to be a contested case by an agency head. If the agency head determines that a matter is a contested case, it will be transmitted to the Office of Administrative Law for a trial-type adversarial hearing. If it is concluded that the matter is not a contested case, the agency head may still find that the matter warrants a public quasi-legislative hearing or an administrative review either in person or on the papers. Finally, the agency head might conclude that no further administrative action is required.

Relevant to this statutory and regulatory requirement is the definition of "agency head." N.J.S.A. 52:14B-2 defines an "agency head" as the individual or group of individuals constituting the highest authority within any agency authorized or required by law to render an adjudication in a contested case. Therefore, to determine who is the "agency head," within the meaning of the APA, it is necessary to review the statutory basis for the agency adjudication. For example, under the civil service laws, it is the multi-member Merit System Board which is authorized to finally adjudicate contested cases involving employees in the classified civil service. Therefore, it is that multi-member body which determines whether a matter constitutes a "contested case."

When a question arises as to whether a particular matter is a contested case, the agency head should seek legal advice from the Attorney General. N.J.A.C. 1:1-4.1. This provision underscores the statutory role of the Attorney General as "sole legal advisor, attorney or counsel" to all State agencies. N.J.S.A. 52:17A-4(e). The Attorney General discharges this statutory function through the Deputy Attorneys General within the Division of Law, Department of Law and Public Safety.

Should an agency head determine that a matter is not a contested case, that decision is reviewable in the Appellate Division of the New Jersey Superior Court "as of right" in accordance with R. 2:2-3(a)(2).

3. Statutory Basis for Agency Adjudication

A contested case is commenced in the State agency with appropriate subject matter jurisdiction, N.J.A.C. 1:1-3.1. A brief sampling of the statutory basis for agency adjudication will help to illustrate the almost limitless variety of issues, rights, obligations and legal relations encompassed within the administrative hearing process. Of course, this discussion does not include all agency heads who are empowered to decide contested cases nor does it even include all types of contested cases decided by a particular agency.

a. Civil Service Commission

N.J.S.A. 11A:2-6 gives any State or local classified employee the right to appeal major disciplinary actions to the Civil Service Commission. Such employees may also appeal a lay-off to the board. N.J.S.A. 11A:8-4.

b. Department of Community Affairs

The Bureau of Housing Inspections within the Department of Community Affairs has jurisdiction over multiple dwellings containing three or more apartments, hotels and motels. Any individual aggrieved by an Inspection Report and Order of the Commissioner with regard to a multiple dwelling, "shall be entitled to a hearing before the commissioner." N.J.S.A. 55:13A-18. The Bureau of Construction Code Enforcement licenses individuals to administer and enforce the UCCA. Any person aggrieved by a ruling of the agency under this Act is "entitled to a hearing pursuant to the Administrative Procedure Act." N.J.S.A. 52:27D-124g.

c. Department of Education

The Commissioner of Education, pursuant to N.J.S.A. 18A:6-9 has jurisdiction "to hear and determine without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the state board or of the commissioner." These include tenure hearings (N.J.S.A. 18A:6-10), seniority cases (N.J.S.A. 18A:28-9), increment withholding cases (N.J.S.A. 18A:29-14), military credit cases (N.J.S.A. 18A:18-11.1 and N.J.S.A. 18A:29-11), student suspension and expulsion cases, school budget appeals (N.J.S.A. 18A:22-38), school election inquiries (N.J.S.A. 18A:14-63.12), bus transportation cases (N.J.S.A. 18A:39-1) and cases involving termination of a sending-receiving relationship (N.J.S.A. 18A:38-13). The Office of Administrative Law has final decision-making authority in matters arising under the Individuals with Disabilities Education Act, 20 U.S.C.A. §1401 *et seq.* and in education related matters arising under the Rehabilitation Act of 1978, U.S.C. s 504.

d. Department of Environmental Protection

Among the varied responsibilities of this Department is the enforcement of the Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.*, which establishes a comprehensive framework for the prevention and correction of discharges of pollutants which may affect the waters and establishes a system of permits. Agency actions including issuance of an administrative order to enforce compliance, N.J.S.A. 58:10A-10(a)(1), (b); issuance of a Notice of Intent to Assess a Civil Administrative Penalty, N.J.S.A. 58:10A-10(a)(2), (d); and agency action granting, denying, modifying, suspending, revoking, or refusing to reissue permits regulating the discharge of pollutants, pursuant to the New Jersey Pollutant Discharge Elimination System, N.J.S.A. 58:10A-6(c), may become the subject of a contested case. Administrative Law Judges act as arbitrators in spill fund cases and, pursuant to the requirements of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, issue final decisions in these matters.

e. Department of Health and Senior Services

Several types of contested case hearings are conducted before OAL on behalf of the Department of Health and Senior Services. The bulk of hearings concern the assessment of penalties against health care facilities or proposed suspension or revocation of a facility's license for violation of licensing standards pursuant to N.J.S.A. 26:2H-13, 14. A second source of hearings stems from the denial of a certificate of need to any applicant proposing to initiate a new health care service or to expand existing services or facilities. N.J.S.A. 26:2H-9.

f. Department of Human Services

(i) Division of Medical Assistance and Health Services

An applicant or recipient has the opportunity for a hearing if his or her claim for medical assistance is "denied, reduced, terminated or not acted upon within a reasonable time." N.J.S.A. 30:4D-7(e). A provider of health care services has a hearing right on a "valid complaint arising out of the claims payment process." N.J.S.A. 30:4D-7(f).

(ii) Division of Family Development

Several major programs of the Division require fair hearings: Aid to Families with Dependent Children and Food Stamp Program, which are federally funded and regulated, and General Assistance, which is a State program.

g. Department of Law and Public Safety

(i) Division of Civil Rights

The Law Against Discrimination authorizes the Division to accept and investigate complaints of discriminatory conduct and to hold hearings if probable cause is found to credit the allegations of the complaints. N.J.S.A. 10:5-13 through -16. If probable cause is found, a deputy attorney general prosecutes the complaints. A complainant may prosecute his or her own complaint at a hearing before OAL after 180 days from the filing of the complaint, if the Division has not already entered a finding of No Probable Cause. N.J.S.A. 10:5-13. In such cases, a deputy attorney general would not prosecute the complaint.

(ii) Division of Alcoholic Beverage Control

The Director of the Division of Alcoholic Beverage Control supervises the manufacture, distribution and sale of alcoholic beverages, N.J.S.A. 33:1-3, is authorized to suspend or revoke any license issued by the Director or by a municipal governing body or board, N.J.S.A. 33:1-22, and to hear appeals from a municipal governing body's actions as concerns issuance, renewal, extension, transfer, suspension and revocation of licenses. N.J.S.A. 33:1-22, -26, and -31.

(iii) Division of Consumer Affairs

The Attorney General, acting through the Division on Consumer Affairs, is authorized to hold hearings to determine whether there have been violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, 8-3.1, and to enforce the provisions of the New Jersey Lemon Law, N.J.S.A. 56:12-29.

(iv) Motor Vehicles Commission

N.J.S.A. 39:5-30 calls for an administrative hearing after due notice in preliminary fatal accident cases (N.J.S.A. 39:5-30(b) and (d)), points cases (N.J.S.A. 39:5-30.5), persistent violator cases (N.J.S.A. 39:5-30.10), interstate compact cases (N.J.S.A. 39:5D-1 *et seq.*) and insurance surcharge cases (N.J.S.A. 17:29A-33 *et seq.*). Other types of cases involve cardiovascular disorders (N.J.A.C. 13:19-4.1 *et seq.*) or convulsive seizures (N.J.A.C. 13:19-5.2). Special requirements also apply to the licensing of bus drivers (N.J.A.C. 13:21-14.1 *et seq.*).

4. Procedural Rules

The Uniform Administrative Procedure Rules were adopted by the Office of Administrative Law pursuant to the statutory authorization to "develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether a summary or plenary hearing should be held to regulate the conduct of contested cases and the rendering of administrative adjudication. N.J.S.A. 52:14f-5(e).

These rules establish a uniform procedure governing the conduct of all contested cases, whether these cases are heard by OAL or by the agency head directly as permitted by N.J.S.A. 52:14F-8. In order to ensure uniformity, the rules provide that no agency other than the OAL may propose hearing rules. N.J.A.C.1:1-1.1(c).

However, the one exception is those procedural rules which govern the filing of the initial pleading with the agency head. In this regard, the OAL rules specifically provide that the commencement of the contested case is to be governed by the procedural rules adopted by the various agencies. N.J.A.C. 1:1-6.1.

5. Initial Pleadings.

a. Format

The pleadings in a contested case may be in the form of a petition, a complaint, an order to show cause, a notice of proposed action "or any other form permitted by an agency's rules." N.J.A.C. 1:1-2.1.

As discussed above, the rules of the agencies govern the initiation of contested cases. In some instances, a formal pleading process is specified. The rules governing educational disputes,

for example, set forth specific requirements for the format of a Petition of Appeal to the Commissioner of Education, N.J.A.C. 6:24-1.3, and include a sample petition for the use of parties. Similarly, a discrimination complaint filed with the Division on Civil Rights must include a brief statement of the facts deemed to constitute the alleged discrimination; the section of the Law Against Discrimination allegedly violated; a statement giving all pertinent facts as to whether any other action, either criminal or civil, has been instituted in the matter; and notarized signature and verification by the person or persons filing the complaint. N.J.A.C. 13:4-3.1, et seq.

The above pleadings are utilized by individuals to initiate proceedings before State agencies. In many instances, however, the initial pleadings originate with the agency itself. For example, the initial pleading in a Motor Vehicle Commission matter is the notice of proposed suspension sent by the Director to a licensee. (Samples of the notices sent by DMV are included in the appendices to this book.) Similarly, the initiating document in a Department of Community Affairs, Bureau of Housing Inspections case is the Notice of Inspection Report and Commissioner's Order.

The first pleading may be amended at any time, either before or after the presentation of proof, when an amendment is not precluded by statute or constitutional principle and, in the judge's discretion, would be in the interest of efficiency, expediency, the avoidance of over technical pleading requirements and would not create undue prejudice. If the judge grants the amendment to the first pleading, a brief continuance may also be granted in order to permit the opposing party additional time to prepare to meet the additional charges or allegations in the amended first pleading. N.J.A.C. 1:1-6.2(a).

b. Time to Initiate Contested Case

(i) Time for Filing Initial Pleading

There is no general time limit for filing a hearing request. Time frames for filing the initial pleading with the agency head are generally established by the statutory provisions which form the bases for agency adjudication or by the agency's procedural rules. Generally, you should refer to the statutory provisions which form the substantive bases for agency adjudication and to any procedural rules adopted and retained by that agency to ascertain whether it has established a particular time period for the filing of an initial pleading with it. Statutory time frames are usually found to be mandatory.

For example, petitions of appeal to the Commissioner of Education must be filed within ninety days after the receipt of the notice by the petitioner of the order, ruling or other action concerning which the hearing is requested. N.J.A.C. 6A:3-1.3

A teacher who proceeds to arbitration is not relieved from compliance with the ninety day requirement. If the teacher proceeds to arbitration, a Petition of Appeal should also be filed with the Commissioner within the ninety-day period. Complaints of discrimination filed with the Division pursuant to the Law Against Discrimination must be filed within 180 days after the alleged

act of discrimination. N.J.A.C. 10:5-18. *Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n*, 79 N.J. 311, 326-27, n.4 (1979). *See, Riley v. Hunterdon Central High Bd. of Ed.*, 173 N.J. Super. 109 (App. Div. 1980) (Petition of Appeal must be filed within ninety days of the action which generated the complaint. A Petition of Appeal filed thirteen months after the challenged action but within ninety days of the arbitrator's award is untimely and must be dismissed.)

(ii) Time for Filing Hearing Requests

In many instances, the initial pleadings originate in the State agencies and are sent to individuals in the form of proposed agency action. A sampling of these situations follows. These provisions establish strict time frames within which individuals may request hearings after receipt of notices of proposed agency action.

(a) Civil Service Commission

For disciplinary actions, the time frame for appealing is twenty days. The agency is without authority to extend it. N.J.S.A. 11A:2-15. *Murphy v. Department of Civil Service*, 155 N.J. Super. 491 (App. Div. 1978). For other types of administrative appeals, the regulations of the Commission routinely utilize a twenty-day time frame as well. *See, e.g.*, N.J.A.C. 4A:3-3.9(c) (classification appeals); N.J.A.C. 4A:4-6.4; N.J.A.C. 4A:2-4.2 (termination at end of working test period appeals).

(b) Department of Community Affairs

A person aggrieved by a ruling under the Hotel and Multiple Dwelling Law must request a hearing within 15 days. N.J.S.A. 55:13A-18. This time limit is jurisdictional; the Department is without authority to entertain a request for a hearing not submitted in accordance with this statutory time period. *Community Affairs Department v. Wertheimer*, 177 N.J. Super. 596 (App. Div. 1980). A person aggrieved by a ruling under the Uniform Construction Act must also file an application for a hearing within fifteen days of receiving the notice of the ruling, action, order or notice which generated the complaint. N.J.S.A. 52:27D-124g.

(c) Department of Health and Senior Services

A hearing on a denial of a certificate of need must be requested within thirty days of receipt of the Commissioner's letter. N.J.S.A. 26:2H-9. A hearing on a licensing sanction against a health care facility must be requested within thirty days after the date of mailing. N.J.S.A. 26:2H-13.

(d) Department of Human Services Division on Family Development

Under General Assistance, an individual must request a hearing within ten days of the mailing date of the notice of adverse action. N.J.A.C. 10:85-7.3 and 7.4. With regard to AFDC, a hearing must be requested within ninety days of the notice of adverse action. N.J.A.C. 10:81-6.8.

(e) Department of Human Services Division on Medical Assistance and Health Services

A provider of health care services or a recipient, qualified applicant or applicant for medical assistance benefits must file a written notice of appeal within twenty days of the date of the agency letter in order to obtain a hearing. N.J.A.C. 10:70-7.2.

(f) Motor Vehicles Commission

The licensee must request a hearing regarding a proposed action to be taken against the licensee by the Division within 25 days from the date of notice. N.J.A.C. 13:19-1.2(a).

(g) Treasury/Division on Pensions

N.J.A.C. 17:1-5(b) provides that "the decision by the agency shall be final unless the applicant shall file a request for a hearing within forty-five days after the date of the written notice of the decision."

(iii) Laches

Where no statutory or regulatory provision establishes a time period for either filing an initial pleading or for requesting a hearing, the equitable doctrine of laches may come into play. Of course, this doctrine would generally only have application if there was a significant delay in advancing a claim before a State agency or by a State agency or where conduct or failure to act might reasonably be construed as a waiver of that claim.

The time constraints of laches are not fixed but are characteristically flexible. Pomeroy defines laches as:

> such neglect or omission to assert a right as, taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity.

2 *Equity Jurisprudence* § 419, at 171-72 (5th ed. 1941).

The Supreme Court of New Jersey has held that laches may be invoked when there has been "delay for a length of time which unexplained and unexcused, is unreasonable under the

circumstances and has been prejudicial to the other party." *West Jersey Title Co. v. Industrial Trust Co.*, 27 N.J. 144, 153 (1958). Because the central issue when determining to apply the doctrine of laches is most frequently whether "it is inequitable to permit the claim to be enforced, . . . generally the change in conditions or relations of the parties coupled with the passage of time becomes the primary determinant." *Lavin v. Hackensack Bd. of Ed.*, 90 N.J. 145, 152-53 (1982).

Therefore, when an agency head is determining whether to invoke the doctrine of laches to bar an administrative claim, the length of delay, the reasons for delay, and the changing conditions of the parties are the most important factors to be considered. The delay in requesting a hearing may not have to be as prolonged as delays in advancing other types of administrative claims to result in laches since the time frame for requesting an administrative hearing is characteristically short and any delay may be viewed as a waiver of the right to a hearing.

c. Responsive Pleadings

Agency rules also govern the filing of responsive pleadings, N.J.A.C. 1:1-6.1. Therefore, where complaints are filed with agencies such as the Department of Education that provides a forum for the adjudication of educational disputes, the education rules require the respondent to file an answer, with proof of service of a copy to petitioner, within twenty days of receipt of the petition. N.J.A.C. 6A:3-1.5.

The procedural rules governing the filing of discrimination complaints with the Division on Civil Rights also provide that the respondent must serve an answer on the Division within twenty days after service of the verified complaint. There is no required form of answer; it may be either by letter or in a form similar to an answer filed in the Superior Court. As with the answers filed in Education matters, general denials are not permitted. Respondents must "make their denials as specific denials which meet the substance of designated allegations or paragraphs of the complaint." N.J.A.C. 13:4-5.1(c).

Where the initial pleading is a notice of proposed agency action, such as in Department of Community Affairs cases citing housing code violations or in Motor Vehicles cases, no formal answer is required. The request for a hearing submitted in response to the agency notice generally constitutes the "answer" in those matters. As discussed earlier, it is *extremely important* that the request for a hearing is filed within the time frame designated in the notice of proposed action. Many of these time periods have been construed by the courts as jurisdictional. In those cases, if the hearing request is submitted beyond the prescribed time frame, the agency head is powerless to entertain it. Furthermore, even though there may be no requirement to file a formal answer, it may help structure a respondent's case if, in the request for a hearing, the allegations contained in the notice are denied with specificity and any affirmative defenses are set forth.

Sample answers responding to complaints are included in the Appendix as well as an expanded form of a request for a hearing. If there is no rule governing the content of answers to be filed in particular agencies, these may be used for format. If there is no agency rule establishing the

time for filing an answer, one should assume that the answer is due within the standard twenty days after service of the initial pleading.

6. Administrative Investigations

The vast majority of State agencies are granted investigatory powers to determine whether there is compliance with the laws entrusted to them for execution. For example, the Commissioner of Health is authorized to make investigations, including the issuance of subpoenas for the production of papers or attendance of witnesses, whenever it is necessary to implement the State health laws. N.J.S.A. 26:1A-45 through -49. The Professional Boards, the Director of the Division of Consumer Affairs and the Attorney General all have broad investigatory powers to determine if licensees are engaged in unlawful conduct. Furthermore, under certain circumstances, the Division of Pensions is authorized to investigate the claims of individual members of the fund as to whether those individuals are entitled to specific benefits. For example, an individual who applies for accidental disability retirement benefits must undergo a physical examination with a physician designated by the fund in order to determine whether that individual qualifies for such a benefit. *See* N.J.S.A. 43:15A-43; N.J.S.A. 18A:66-39(c); N.J.S.A. 43:16A-7. This provision also applies to individuals applying for an ordinary disability retirement benefit. *See* N.J.S.A. 43:15A-42; N.J.S.A. 43:16A-5; N.J.S.A. 18A:66-39(b). The Division will also investigate situations in which an individual's final compensation is in dispute. *See* N.J.A.C. 17:1-4.18; N.J.A.C. 17:2-4.1(d); N.J.A.C. 17:3-4.1(e); N.J.A.C. 17:4-4.1(d). The above described investigations, as well as those conducted by various other agencies, often result in the issuance of proposed agency action which represents the initial pleading in a contested case.

There are, however, a limited number of agencies in which the filing of the verified complaint, or initial pleading, with that agency triggers the conduct of an investigation. The Real Estate Commission is required upon the filing of a verified complaint with it to "investigate the actions of any real estate broker or real estate salesman, or any person who assumes to act in either such capacity within this State." N.J.S.A. 45:15-17. The Law Against Discrimination specifically provides that, after the filing of a complaint:

> the Attorney General shall cause prompt investigation to be made in connection therewith and advise the complainant of the results thereof. If the Attorney General shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, the Attorney General shall immediately endeavor to eliminate the unlawful employment practice or the unlawful discrimination complained of by conference, conciliation and persuasion during a period terminating not later than 45 days from the date of the finding of probable cause.

N.J.S.A. 10:5-14.

These investigations are governed by N.J.A.C. 13:4-2, N.J.A.C. 13:4-8 and N.J.A.C. 13:4-9. Should the investigation not be completed within 180 days, the complainant may request that the Director of the Division on Civil Rights present the matter to OAL for hearing. This request shall

not be honored if the director has found "no probable cause . . . or has otherwise dismissed the complaint." N.J.S.A. 10:5-13.

7. Request for Declaratory Ruling

A seldom-used APA provision creates an administrative proceeding for the rendering of declaratory rulings. N.J.S.A. 52:14B-8 provides in pertinent part:

> [A]n agency upon the request of any interested person may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. A declaratory ruling shall bind the agency and all parties to the proceedings on the state of facts alleged. Full opportunity for hearing shall be afforded to the interested parties. Such ruling shall be deemed a final decision or action subject to review in the Appellate Division of the Superior Court.

This particular provision is made specifically subject to the Attorney General's statutory role as sole legal advisor to State agencies. N.J.S.A. 52:17A-4(b) and (e). It also does not "affect the right or practice of every agency in its sole discretion to render advisory opinions." N.J.S.A 52:14B-8.

The availability of administrative declaratory rulings was commented upon by the court in *Davis v. Board of Medical Examiners*, 497 F. Supp. 525 (D.N.J. 1980). In that case, chiropractors challenged certain advertising rules adopted by the Board of Medical Examiners as violative of the First Amendment guarantee of free speech and also as so vague and indefinite as not to give fair notice and due warning of proscribed activity. The federal court denied the motion for a preliminary injunction and stayed the federal action, under principles of *Pullman* abstention, so that appropriate State proceedings could be pursued by plaintiffs. *Railroad Comm'rs v. Pullman*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941). Among the State avenues open to plaintiffs was the filing of a petition for a declaratory ruling with the Board of Medical Examiners pursuant to N.J.S.A. 52:14B-8.

> By this route, plaintiffs may prepare and submit to the Board an array of graphics and text for proposed publication and obtain a ruling on the question whether the same, or any of them, do or do not contravene the statute and regulation in respect to public information. They are also free to compile a record on constitutional issues, as was done in *Bates*. [*Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977)]. A ruling that a particular text or texts among those presented is in compliance, would enable plaintiffs to use them, fully protected against the risk of disciplinary proceedings by reason of the binding effect on the agency. They are also free to have judicial review of any adverse rulings, as well as of constitutional matters raised, with an adequate record made during the proceedings.

Davis, 497 F. Supp. at 531.

Whenever a petition for a declaratory ruling is filed with an agency head, initial consideration must be given to the nature of the hearing required by N.J.S.A. 52:14B-8. If the petition constitutes a "contested case," the parties are entitled to a trial-type adversarial proceeding. Clearly, the proceeding described by the court in *Davis* contemplated this type of hearing for the necessary development of a full factual record. However, if the petition does not raise a factual dispute but basically implicates a policy issue, the agency head may provide for a quasi-legislative type hearing or simply resolve the matter on papers or with informal appearances.

In addition to the issuance of declaratory rulings, agency heads still have the discretion to render advisory opinions. For example, the rules adopted by the Division of Alcoholic Beverage Control, within the Department of Law and Public Safety, contain a provision specifically addressing "Requests for Advisory Opinions." N.J.A.C. 13:2-36.1(a) provides:

> (a) Other than in proceedings instituted pursuant to N.J.S.A. 52:14B-8 (Declaratory Rulings), a written request for an interpretation, application, or other inquiry concerning the Division's regulations, policies or practices shall only be considered if it sets forth issues not previously articulated by the Division or involves a substantial question of general applicability.

In conclusion, proceedings may be initiated before a State agency by way of a petition for a declaratory ruling as well as the more typical complaints, petitions or orders to show cause. As with any matter filed with an administrative agency, the agency head is authorized to review the petition for a declaratory ruling to determine whether it constitutes a contested case entitling the parties to a trial-type adversarial hearing to be conducted either by the agency head directly or by the Office of Administrative Law. Given the general nature of declaratory rulings, it may be more common that these proceedings are found not to be contested cases. Under those circumstances, the parties might be accorded an informal hearing or quasi-legislative hearing within the Department or be permitted to present written submissions and make legal arguments to the agency head. Additionally, some agencies, by statute or regulation, are authorized to render advisory opinions.

B. ADMINISTRATIVE RESOLUTION

Within thirty days after the parties have met an agency's pleading requirements, the agency should either transmit the matter to the OAL for hearing or notify all parties of its decision to retain the matter for hearing before the agency head.

Agencies are encouraged to attempt to settle matters during this thirty-day period. N.J.A.C. 1:1-4.2 and 1:1-8.1. Additional time may be taken only if all parties agree. An agency need not attempt to settle a matter prior to its transmittal to the OAL for hearing, but may immediately file a case with the OAL if the agency determines that settlement efforts would be inappropriate or unproductive. N.J.A.C. 1:1-8.1c.

The practice regarding administrative resolution varies widely from agency to agency. The Division on Civil Rights, for instance, is required by statute to attempt conciliation after a finding of probable cause is entered. N.J.S.A. 10:5-14; N.J.A.C. 13:4-11. The Division's rules also provide for settlement efforts during the fact-finding conference. N.J.A.C. 13:4-2.3. Settlement of the Department of Environmental Protection cases is both authorized and frequently utilized. A prehearing conference is available before the Motor Vehicles Commission in each case to discuss the possibility of administrative resolution of the dispute. Complaints filed with the Office of Consumer Protection may be resolved by Consent Order, approved by the Chief of Consumer Protection and executed by the Director of the Division of Consumer Affairs. The rules governing the Temporary Assistance for Needy Families (TANF) program specifically encourage informal efforts to effect an adjustment; however, such informal efforts may not delay the process of a fair hearing whenever a request for such is made.

Many State agencies do not have formal rules or procedures governing administrative resolution of disputes although most, as a practical matter, will attempt to informally settle or resolve controversies before them. A person who has just filed a complaint or request for a hearing with an agency head would be well advised to also ask the agency head to schedule an informal conference in the agency to determine whether the matter is capable of administrative solution. Such request may result in an economical, expeditious and satisfactory settlement of the matter in dispute. Of course, as noted earlier, these informal efforts must be concluded within thirty days after the parties have complied with all of the agency's pleading requirements, unless all parties agree to extend this time period.

C. TRANSMITTAL OF CONTESTED CASED

1. Format and Time Frame

If the controversy cannot be administratively resolved and the agency head determines that the matter constitutes a contested case, the next step is to transmit the contested case to the Office of Administrative Law, except in the rare instance where the agency head determines to hear the contested case directly. N.J.S.A. 52:14F-8(b). If the agency head retains a contested case, it must be heard by the agency head and not by his or her designee. Only a very few agencies, such as the Casino Control Commission, the Real Estate Commission, and several of the Professional Boards, routinely hear contested cases directly. In the overwhelming majority of cases, the agency head will refer matters to the OAL for hearing and will only hear cases directly if compelling reasons exist for doing so.

Contested cases are to be transmitted to the OAL after completing settlement efforts or within thirty days from the date the contested case commenced and pleading requirements have been met. The attempts at settlement should not go beyond this thirty-day period unless all parties agree an extension of the time frame. N.J.A.C. 1:1-8.1

The OAL has no authority to compel transmission of a contested case to it. If an agency fails to promptly determine whether a matter constitutes a contested case, a party may petition the

agency head to make such determination; the agency head then has 30 days to do so. N.J.A.C. 1:1-4.1(a). The agency head has 30 days from that determination to either transmit the case to the OAL or to notify the parties that the agency head will conduct the hearing. After 30 days, a party may request the agency head for referral to OAL. N.J.A.C.1:1-8.1. If faced with a continued lack of response, the applicant must resort to the courts to compel agency action.

When a contested case is transmitted to the Office of Administrative Law it must be accompanied by a transmittal form which must include: the name of the transmitting agency; a description of the nature of the case, including the legal authority and jurisdiction upon which the agency action is based; an estimate of the total time required for the hearing; anticipated special features or requirements, including the need for emergent relief, discovery, motions, prehearing conference or conference hearing and whether the case is a remand; the names and addresses of all parties and their representatives (for corporations, the transmitting agency must provide the name and address of an attorney or qualified non-lawyer representative); and the names of any other agencies claiming jurisdiction over either the entire or any portion of the factual dispute presented in the transmitted contested case. N.J.A.C. 1:1-8.2(a)

The transmittal form may be used by agencies to request expedited action on a matter, consolidation with other matters, or a specific location for a hearing. Agencies also note on the form the special requirements which require the completion of the hearing within a shortened time frame.

If the agency unsuccessfully attempts to settle a matter administratively, the parties may utilize that informal meeting to request that certain information be included in the transmittal notice, *i.e.*, certain period for discovery, need for special hearing location. (A sample transmittal form is included in the appendix to this book.)

2. Attachments

The transmitting agency must attach all pleadings to the transmittal form. N.J.A.C. 1:1-8.2(b). Pleadings are defined in N.J.A.C. 1:1-2.1 as written statements of the parties' respective claims and defenses. A pleading may be a petition, complaint, answer, order to show cause or any other form permitted by an agency's rules.

"Investigative reports and other evidentiary matters" may only be transmitted to the OAL if they have been served upon the parties. N.J.A.C. 1:1-8.2(c). The Appellate Division reversed and remanded the decision of the Civil Service Commission in *Matter of Parlow*, 192 N.J. Super. 247 (App. Div. 1983), for considering a copy of Parlow's employee service record which was not introduced into evidence before the administrative law judge. This record had been in the Commission's file and had been included with the initial papers transmitted to the OAL. It had not, however, been provided to the parties and had not been formally moved into evidence. Although the Court concluded that the document was clearly relevant to the determination of an appropriate penalty, it found a remand necessary so that the parties could be "afforded an opportunity to test its trustworthiness in the normal manner and refute it if desired." *Parlow*, 192 N.J. Super. at 250.

Although the material transmitted to the OAL may vary somewhat from agency to agency, where the case is initiated by the State agency, the material will include copies of the notice of proposed agency action, the hearing request and any written response to the notice which may have been filed. Copies of this material are also provided to the party. When contested cases are initiated with an agency, the initial papers transmitted to the OAL typically include the Petition or Complaint and the Answer or other responsive pleading. For example, the Division on Civil Rights will transmit all pleadings, which generally include a Complaint, Answer and Finding of Probable Cause.

When the contested case is transmitted to the Office of Administrative Law, the Clerk of the OAL marks it as having been received and filed and immediately assigns it an OAL docket number. The Clerk then notifies the agency head and the parties to the case of the filing date and the OAL docket number. N.J.A.C. 1:1-8.3(a) and 1:1-9.5(a).

III. THE CONTESTED CASE HEARING

A. JURISDICTION OF THE OFFICE OF ADMINISTRATIVE LAW
(N.J.A.C. 1:-3)

The Office of Administrative Law (OAL) acquires jurisdiction over a matter when two requirements have been satisfied. First, an agency head must determine that the matter is a contested case. Second, the matter must be filed in the OAL.

The OAL cannot receive, hear or consider any pleadings, motions or documents of any kind until it has acquired jurisdiction over the matter.

B. SCHEDULING
(N.J.A.C. 1:1-7, 9, 14)

1. Initial Notice

After a contested case is filed in the OAL, the Clerk sends out a Notice of Filing to all parties and the transmitting agency informing them that the case has been transmitted to the OAL for hearing. The Notice of Filing contains the date of filing and the docket number assigned by the OAL, a description of the nature of the proceeding, a reference to the controlling hearing procedures, and reference to the parties' rights as to representation. In exigent circumstances, the Notice of Filing may also include notice of the hearing date.

2. Filing and Service Requirements

All papers filed with the OAL must be filed in duplicate. N.J.A.C. 1:1-7.4 requires that all initial papers filed after the filing of the transmittal form must contain:

1. The OAL docket number of the proceeding or, if the case has not yet been transmitted to the OAL, the agency docket number;

2. The name, address and telephone number of the person who prepared the paper; and

3. A caption setting forth the title of the proceeding and a brief description of the paper filed.

All paper must be on 8½ x 11 stock. A paper is considered filed when the original and a copy, or two clear copies, are received by the Clerk of the OAL or with the judge assigned to the case.

Proof of service is required if a question of notice arises or whenever the OAL rules or the agency rules provide for publication, mailing or posting of public notices. In the latter situation,

proofs thereof shall be filed within twenty days of the publication, mailing or posting. N.J.A.C. 1:1-7.2.

The first pleading and all subsequent papers are to be served either in person, by certified mail, return receipt requested, by ordinary mail or in any manner designed to provide actual notice to the person being served either upon the attorneys of record or upon parties appearing *pro se*. N.J.A.C. 1:1-7.1. When necessary, proof of service may be made by an acknowledgment of service signed by the attorney or party, by an affidavit of the person making service, or by a certificate of service appended to the paper to be filed and signed by the attorney for the party making service. N.J.A.C. 1:1-7.2. Service by mail shall be complete upon mailing.

With regard to service by mail, it is helpful to note that there is a presumption that mail correctly addressed, stamped and mailed, was received by the party to whom it was addressed. *Johnson & Dealaman, Inc. v. Wm. F. Hegarty, Inc.,* 93 N.J. Super. 14, 21 (1966). That presumption is rebuttable and may be overcome by evidence that the notice was never, in fact, received. *Szczesny v. Vasquez*, 71 N.J. Super. 347, 354 (App. Div. 1962). However, in *State v. Wenof*, 102 N.J. Super. 370 (Law. Div. 1968), the court observed that no foolproof system of giving notice exists and that the best one can hope for is the creation of methods reasonably calculated to produce the desired results without placing unrealistic burdens on those responsible for giving notice. In that case, the court found that the notice sent by the Director of Motor Vehicles to the licensee at the address specified to be his own, through ordinary mail, was calculated to reach him and afford him an opportunity of resisting the proposed suspension. It was therefore concluded that the actual receipt of the notice of proposed suspension was not a prerequisite in the driver license revocation proceeding.

3. Scheduling

When a contested case is filed, it may be scheduled for mediation, settlement conference, prehearing conference, proceeding on the papers, telephone hearing, plenary hearing, or other proceeding.

4. Notice

After filing, the Clerk prepares a notice of hearing, prehearing conference or other appropriate proceeding and serves it on the parties. The notice contains the date, time, place and nature of the proceeding. The standard for administrative law notice is "timely and adequate" consistent with statutory requirements, regulations and due process of law. Five days notice is deemed timely and adequate in exigent circumstances. Notice of hearing is generally stated on the record or is in writing from the Clerk. In emergency relief proceedings, the Clerk may require the moving party to provide notice of the hearing scheduled to the other parties. Additionally, to meet emergent needs and when permitted by law, notice may be given by telephone.

C. PREHEARING CONFERENCE
(N.J.A.C. 1:-13)

1. Nature of Prehearing Conference

In certain cases, the Clerk of the OAL advises the parties that a prehearing conference will be held to discuss matters pertaining to the case. Some of the matters that may be discussed include:

1. The nature of the proceeding and the issue to be resolved including special evidence problems;

2. The parties and their status, *e.g.*, petitioner, respondent, intervenor, etc. and their representatives, including designated trial counsel;

3. Any special legal requirements as to notice of hearing;

4. The schedule of hearing dates and the time and place of hearing;

5. Stipulations as to facts and issues;

6. Any partial settlement agreements and their terms and conditions;

7. Any pleading amendments contemplated or granted;

8. Discovery matters to be completed and date of completion;

9. Order of proofs;

10. A list of exhibits marked for identification;

11. A list of exhibits marked in evidence by consent;

12. Estimated number of fact and expert witnesses;

13. Any motions contemplated, pending and granted.

The purpose of the prehearing conference is to ensure that the hearing will proceed as smoothly as possible. Parties may request a prehearing conference.

2. Prehearing Memorandum

In appropriate cases, the judge may require the submission of a prehearing memorandum before the conference. In these memoranda, the parties state their respective positions on any or all of the matters listed above, or on other specifically designated matters.

OAL rules require the judge to give ten days notice that prehearing memoranda must be prepared. The parties must file their memoranda with the judge and must serve a copy upon all other parties no later than three days before the date of the scheduled conference.

3. Prehearing Orders

Within ten days after the conclusion of the prehearing conference, the judge enters a written order which concisely sets out the matters listed above and in N.J.A.C. 1:1-13.2 in numerical sequence along with their resolution. The judge's order may also contain resolution of other matters which arose during the conference.

4. Objection to Prehearing Order

The parties are permitted to file a request to amend a prehearing order to correct errors. The request must be filed with the judge and served on the other parties within five days of receiving the order. The judge may also amend the order to accommodate circumstances occurring after entry of the order or, unless precluded by law, to conform the order with the proofs.

Finally, a prehearing order is also subject to interlocutory review by the agency head (*see* section K, *infra*).

D. SUBPOENAS
(N.J.A.C. 1:-11)

1. Power to Issue

Subpoenas may be issued by the Clerk of the OAL, a judge or by an attorney, a pro se party, or by a non-lawyer representative. N.J.S.A. 52:14F-5u. Subpoenas for high-level governmental officials such as the Governor, agency heads, assistant or deputy commissioners or division directors can only be issued by a judge and only upon a showing that the subpoenaed individual has direct involvement in or firsthand knowledge of the events of the case or is essential to prevent injustice. Similar to a Superior Court subpoena, the administrative law subpoena can command the attendance of a person or may require production of books, papers, documents or other objects designated.

2. Service Fees

Witnesses required to answer an administrative law subpoena are given the same fee as witnesses under subpoena in the Superior Court. The fee is paid by the party requesting the subpoena.

3. Forms

Subpoena forms are available free of charge at the OAL and can be obtained from the OAL website: www.state.nj.us/oal. The subpoena must state the title of the case and the requesting party, and command the person to whom it is directed to attend and give testimony at a specific time or to produce books, documents or other objects. The subpoena may be signed by an attorney or non-lawyer representative or a *pro se* party, except if the subpoenaed individual is a high-level government official when the subpoena must be signed by a judge.

The subpoena must include:

1. the case title and docket number;

2. the name, address and phone number of the requesting party;

3. that inquiries concerning the subpoena be directed to the requesting party;

4. the name of the person to whom it is directed; and

5. that the person is commanded to appear at a specific time and place to give testimony or to produce books, papers or other designated objects.

The requesting party should serve the original subpoena by either certified mail, return receipt requested, or by personal service, together with the appropriate fee. Upon service, the requesting party should complete the "return of service" portion on a copy of the subpoena.

The requesting party retains the copy of the subpoena. It should be submitted to the judge only if the person to whom it is directed fails to appear.

4. Motion to Quash

The judge on a motion made promptly may quash or modify any subpoena on a showing of good cause. If the subpoena requires the production of books, documents, papers or other records, the judge on motion may quash or modify the subpoena if compliance would be unreasonable or oppressive. The judge may condition denial of the motion to quash upon the advancement of the reasonable cost of producing the objects subpoenaed by the party on whose behalf the subpoena is being issued.

5. Enforcement of Administrative Subpoena

Administrative law subpoenas are enforceable by an action in a trial division of the Superior Court.

E. DISCOVERY
(N.J.A.C. 1:1-10)

1. Considerations Governing Discovery

By giving the litigants access to facts which tend to support or undermine their own position or their adversary's, the OAL's rules on discovery are intended to streamline the hearing and to enhance the possibility of settlement or withdrawal.

A request for discovery cannot be denied merely because the information sought may be inadmissible in evidence at the hearing. The standard for discovery is the probability that the information sought will lead to the discovery of admissible evidence.

Discovery is generally unavailable against a State agency which is neither a party to the proceeding nor is asserting a position in respect to the outcome, but is solely providing the forum for the resolution of the dispute.

2. Methods of Beginning Discovery

a. Informal

Administrative law discovery is intended to be expeditious and uncomplicated. Therefore, the parties may utilize less formal opportunities to obtain discoverable material before utilizing the methods of formal discovery. These methods include voluntary exchange of information, consultation of public documents and other similar means.

b. Discovery on Notice

The methods of discovery available on notice are:

1. Written interrogatories;

2. Production of documents or objects;

3. Permission to enter upon land or other property for inspection and other purposes; and

4. Requests for admissions.

A party may also request an informal, non-transcribed meeting with another party's witnesses. Notice of the request and an opportunity to be present must be given to the other party. These meetings are voluntary; they cannot be compelled nor may refusal to attend be considered good cause to permit depositions. Parties may also agree to conduct depositions without filing a motion; but, the depositions shall not interfere with the scheduled hearing date.

Parties must serve discovery notices with reasonable expedition. Within fifteen days from receipt of a notice requesting discovery, the receiving party must either provide the requested information, material or access or offer a schedule for reasonable compliance with the request or move for relief from the request.

A party affected by a notice for discovery may motion for relief from the discovery request by placing a conference call to the judge and the other parties within ten days from receipt of the notice. If a party wishes to compel a response or to object to a response, a conference call is to be placed within ten days of the notice due date or of receiving the response. If the call is not placed within ten days and if the delay is not for good reason, the judge may deny the objection or decline to compel the discovery.

Factors considered by the judge in a motion for relief from discovery are: the need for the information; relevance; materiality; the control the party exercises over the information; hardship; and matters of expense, privilege, trade secret and oppressiveness.

c. Depositions

Depositions upon oral examination or written questions and physical and mental examinations are available only on motion for good cause shown. Such motions must be served upon all parties and should be made with reasonable expedition. In considering a motion requesting a deposition or examination, the judge weighs: the need for the deposition or examination; alternative means of obtaining the information; the requested location and time for the deposition or examination; hardship; and matters of expense, privilege, trade secret, or oppressiveness. If an order granting a deposition or examination is issued, it will specify a reasonable period during which the deposition or examination must be concluded. Motions for depositions must comply with the same time limits as other motions.

3. Cost of Discovery

The costs of discovery are borne by the party seeking discovery. However, a State agency is not required to pay the cost of discovery if the person from whom the discovery is sought is entitled to recover the cost of discovery from others.

4. Time for Discovery

Parties should commence discovery immediately. Discovery is to be completed at least 10 days before the evidentiary hearing or by a date ordered by the judge at the prehearing conference.

F. MOTION PRACTICE
(N.J.A.C. 1:1-12)

A party seeking an order of a judge must apply by motion. No technical forms of motion are required. The party must merely state the grounds upon which the motion is based and the relief or order being sought.

All motions must be made in writing unless made orally during a hearing or as permitted by the judge. If a judge has been assigned to the case, the motion is filed with the judge and served on all parties. If a motion is filed in an unassigned case, it should be filed with the Clerk who will immediately assign the case and transmit the motion and case file to the judge. If the motioning party includes a second copy of the motion and a self-addressed stamped envelope, the Clerk will mark the copy filed and mail it to the movant.

Motions and answering papers must be accompanied by all necessary supporting affidavits and supporting statements. Affidavits and supporting statements are required for all facts relied upon which are not of record or which are not the subject of official notice. Properly verified copies of all papers or parts of papers referred to in affidavits should be attached. Proof of service must also be filed.

The opposing parties shall file and serve responsive papers no later than ten days after receiving the moving papers, except for emergency relief applications, summary decision motions, and expedited motions. The moving party may file and serve a response to any matter raised by the opposing party no later than five days after receiving the responsive papers.

With the exception of motions for summary decision, motions concerning predominant interest in consolidated cases, and motions for emergency relief, all motions shall be decided within 30 days of service of the last permitted response.

A moving party may request an expedited schedule for disposition by arranging a telephone conference with the judge and the parties. If the judge agrees to expedite the motion, a schedule for responsive papers, submission and decision will be set by the judge.

Motions submitted in writing are generally decided on the papers, but in certain cases, oral argument may be directed by the judge. When oral argument is required, the parties will be notified. The motion is orally argued by conference telephone call, again unless the judge orders otherwise. The judge may hear the matter wholly or partly on oral testimony or on depositions. The motion is considered submitted for disposition at the close of the oral argument.

At the discretion of the judge, parties may be required to submit briefs or supporting statements pursuant to the above motion timetable or as ordered by the judge.

On a written motion, the judge renders an order on the motion either by:

1. issuing an order, or

2. issuing an initial decision if all issues in the case are resolved

G. EMERGENCY RELIEF
(N.J.A.C. 1:1-12)

1. Application for Emergency Relief

Emergency relief pending final decision is available in contested cases where authorized by law and where irreparable harm will result unless an expedited decision is made. **Application for emergency relief must be made directly to the agency head, not to the OAL.**

The agency head has the authority to hear an application for emergency relief personally. The agency head may also forward the matter to the OAL for a hearing on the application for emergency relief. Applications for emergency relief are heard on an expedited basis.

Only the agency head has the regulatory power to grant emergency relief. *In re Uniform Adm'n Procedure Rules*, 90 N.J. 85 (1982). If the application is referred to the OAL, the administrative law judge cannot grant final relief. The ALJ is authorized to make a recommendation which will be incorporated in an order which is then returned to the agency head for final action. As provided in the rules, the agency head, under certain conditions, may grant temporary relief pending action on the application for emergency relief. If the agency head transmits the application for emergency relief to the OAL for hearing, he or she may also transmit the entire contested case.

If the need for emergency relief arises during the conduct of the contested case, the application for emergency relief, according to the OAL rules, must still be made to the agency head. Again the agency head has the discretion of hearing it directly or referring it to the ALJ who is hearing the case. It is important to note that if the agency head determines to review the application, that decision does not constitute a stay of the contested case before the OAL. If the emergency situation requires a stay of the contested case, an application should be made to the ALJ hearing the case to adjourn it pending resolution of the application for emergency relief by the agency head. If the request for an adjournment is denied, a party may consider filing a petition with the agency head, pursuant to N.J.A.C. 1:1-14.10, seeking interlocutory review of that ALJ ruling.

2. Format

Opposing parties are normally given opportunity under the circumstances to respond to an application for emergency relief. When immediate action by the agency head is warranted, either to preserve the subject matter or when circumstances do not permit an opposing party to be fully heard, the agency head will issue an order granting temporary relief pending a decision on the application for emergency relief.

If the agency head grants temporary relief under circumstances, which do not permit the opposing party to be fully heard, temporary relief must:

1. Be based upon specific facts shown by affidavit or oral testimony, that the moving party has made an adequate, good faith effort to provide notice to the opposing party, or that notice would defeat the purpose of the application for relief;

2. Include a finding that immediate and irreparable harm will probably result before adequate notice can be given;

3. Be based on the likelihood that the moving party will prevail when the application is fully argued by all parties;

4. Be as limited in scope and temporary as is possible to allow the opposing party to be given notice and to be fully heard on the application; and

5. Contain a provision for serving and notifying all parties and for scheduling a hearing before the agency head or for transmitting the application to OAL.

After the application for emergency relief has been decided, the agency head serves a written order on the application to the parties. If the case is one that has been transmitted to the OAL prior to the application for emergency relief, the agency head also serves the Clerk of the OAL with a copy of the order.

In a matter which was transmitted to the OAL for decision on the application for emergency relief, the procedure after decision is nearly the same as when the agency retains the case. The judge serves a written order on the application to the parties, the agency head and the Clerk. The primary difference is that the agency head must review the judge's order within forty-five days of the entry of the order. If the agency head does not review the order within forty-five days, the judge's decision is deemed adopted. The forty-five day period may be extended for good cause shown and upon notice to the parties, but only upon joint action of the Director of the OAL and the agency head.

H. INTERVENTION AND PARTICIPATION
(N.J.A.C. 1:-16)

1. Status of Intervenor/Participant

Any party having a statutory right to intervene, or who will be substantially, specifically and directly affected by the outcome of a contested case may intervene by motion. Additionally, the judge may, on his or her motion or on the motion of a party, order the Clerk of the OAL or a party to notify a person or entity of the proceeding and of the opportunity to intervene or participate. Intervenors have all the rights and obligations of a party to the proceeding. The role of a participant is limited. (*See* below)

2. Time of Motion

A motion for leave to intervene may be filed with the Clerk of the OAL at any time after the start of a contested case. If a motion for leave to intervene is made before the case has been filed with the OAL, the motion must be filed with the head of the agency. The agency head may rule on the motion to intervene or may reserve decision for action by a judge after the case has been filed with the OAL.

3. Standards Governing Intervention

When ruling upon a motion to intervene, the judge will consider:

1. The nature and extent of the movant's interest in the case;

2. Whether the movant's interest is sufficiently different from other parties;

3. The prospect of confusion or delay; and

4. Other appropriate matters.

Parties with statutory permission to intervene must be granted intervention. Intervention may not be denied solely because the movant's interest may be represented in part by a State agency who is a party to the case.

4. Participation

Every motion for leave to intervene is treated, in the alternative, as a motion for permission to participate. Any person or entity with a significant interest in the outcome of a case may move for permission to participate. A motion to participate is made at the same time and in the same manner as a motion for leave to intervene. A party is allowed to participate if the party's interest is likely to add constructively to the case without causing undue delay or confusion.

The judge determines the nature and extent of participation in the individual case. Participants are limited to:

1. The right to argue orally;

2. The right to file a statement or brief;

3. The right to file exceptions to the initial decision; or

4. All of the above.

I. MOTIONS FOR SUMMARY DECISION
(N.J.A.C. 1:1-12)

1. Time of Motion

A party may, move for summary decision upon all or any of the substantive issues within the case. The motion must be filed no later than 30 days before the first hearing date or as ordered by the judge.

2. Support for Motion

The motion for summary judgment must be supported by briefs as well as any supporting affidavits. The motion is granted when the discovery and papers show that there is no issue of material fact and that the moving party is entitled to prevail as a matter of law. Summary decision may be reached on any issue in a contested case, even though a genuine factual dispute exists as to other issues.

3. Opposition to Motion

In order to prevail on a motion for summary decision, an adverse party must prepare an affidavit setting forth specific facts showing that a genuine issue exists which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, will be entered.

4. Order on Summary Decision

The motion for summary decision is to be decided within forty-five days from the submission date. If an order grants summary decision on some but not all of the substantive issues, the judge's order will specify which material facts are without substantial controversy and direct appropriate proceedings. At the hearing, these facts are deemed established.

The grant of partial summary decision is not effective until the agency head renders a final decision either upon interlocutory review or at the end of the contested case. However, to avoid unnecessary litigation or expense, the judge may submit the order to the agency head for immediate review as an initial decision.

When the order disposes of all issues, the judge renders an initial decision.

J. CONSOLIDATION AND PREDOMINANT INTEREST
(N.J.A.C. 1:1-17)

1. Time of Motion

At any time after a contested case has been filed with the OAL and before evidentiary hearing, an agency head, the judge or any other party may move to consolidate it with another contested case. Copies of the motion must be served on the transmitting agency if that agency is not a party.

2. Matters Sought to be Considered

Motions for consolidation are directed toward contested cases involving common questions of fact or law, between separate cases with identical parties or between any party to the contested case and any other person, entity or agency. Cases which can be consolidated are those:

1. Already filed in the OAL;

2. Commenced in an agency, but not yet filed with the OAL;

3. Commenced in an agency and not required to be filed with the OAL under N.J.S.A. 52:14F-8.

3. Form of Motion

A motion to consolidate must show why the matter under consideration should be consolidated. If oral argument is scheduled, all parties who appear on the return date must be given a full opportunity to be heard.

4. Standards Governing Consolidation

Motions to consolidate are considered consistent with the OAL policy of fair and expeditious resolution of contested cases. Factors considered on a motion to consolidate include: the nature of questions of fact or law involved; the identity of the parties; the presence of common questions of fact or law; the danger of confusion or delay; and the general policy of disposing of all aspects of the controversy in a single proceeding.

5. Motions to Consolidate Cases Involving Multiple Agencies: Predominant Interest

Occasionally motions to consolidate concern contested cases filed with two or more State agencies. In that situation, the motion and replies must include a predominant interest allegation the judge must determine which agency has the predominant interest in the case and its outcome. The judge's decision is based on:

1. Whether more than one agency asserting jurisdiction over a common issue has jurisdiction over the issue, and if more than one agency has jurisdiction, whether the jurisdiction is mandatory for one of the agencies;

2. Whether the common issue before the two agencies is, for either agency, the sole, major or dominant issue in dispute and whether its determination would either serve to moot the remaining questions or to affect substantially their resolution;

3. Whether the allegations involve issues and interests which extend beyond the immediate parties and are of particular concern to one or the other agency;

4. Whether the claims, if ultimately vindicated, would require specialized or particularized remedial relief available in one agency but not the other;

5. Whether the common issue is clearly severable from the balance of the controversy and thus will permit non-duplicative factual and legal determinations by each agency.

All consolidation orders concerning multiple agencies are sent to both agency heads for review. The agency heads' final orders are to be rendered within forty-five days unless the time limit is extended. If no action is taken within the time limit, the judge's order is deemed adopted by the agency heads. In order to avoid conflicting decisions, agencies are encouraged to consult with one another prior to issuance of the final determination. N.J.A.C. 1:1-17.6. *See*, *City of Hackensack v. Winner*, 82 N.J. 1 (1980).

If one of the agencies is an agency exempt under N.J.S.A. 52:14F-8(a) and the exempt agency has predominant interest, the agency in reviewing the consolidation order may order that its own personnel hear the matter. If the hearer does not have jurisdiction over all the issues within the scope of the agency's predominant interest, the hearer is designated a special administrative law judge, as provided in N.J.S.A 52:14F-6(b).

6. Conduct of Consolidated Cases

In a consolidated case, the judge renders an initial decision based on the issues and arguments presented. This decision disposes of all the issues in controversy.

7. Conduct of Cases Involving Predominant Interest

As noted above, when consolidated cases involve two agencies, the judge must determine which has the predominate interest. The agency with a predominant interest in the outcome of a contested case must make the final decision on all issues within the scope of its predominant interest. The initial decision specifies the issues relating to the predominant interest and clearly identifies the agency having the authority to issue a final decision on those issues.

K. FORM OF HEARING
(N.J.A.C. 1:1-5, 9, 10, 14)

1. Plenary

A plenary hearing is a full adversarial proceeding based on the civil trial model.

2. Telephone Hearings/Conferences

The OAL rules encourage telephone conferences in lieu of in-person proceedings for prehearing conferences, oral argument on motions and discovery motions. These proceedings generally are scheduled for telephone conference unless the judge determines that an in-person proceeding is warranted.

For good cause shown, the judge may permit a witness to present testimony over the telephone. N.J.A.C. 1:1-15.8(e). The judge considers whether the parties consent, whether credibility is an issue, the significance of the testimony, and the reason to take it by telephone in making the determination.

A plenary hearing may also be held by telephone conference call when the judge so directs, subject to the same standards for telephone testimony. N.J.A.C. 1:1-9.1(f).

3. Proceeding on the Papers (N.J.A.C. 1:1-14.8)

A proceeding on the papers is, by OAL definition, a summary proceeding conducted without any personal appearance by the parties before the judge. The hearing is conducted through submission to the OAL of pleadings, affidavits, records and documents.

Proceedings on the papers may be scheduled by the Clerk for:

1. Motor Vehicles Commission cases dealing with excessive points and surcharges, pursuant to N.J.A.C. 1:13; and

2. Department of Environmental Protection cases involving emergency water supply allocation plan exemptions, pursuant to N.J.A.C. 1:7; and

3. Any other class of suitable cases which the Director of the OAL and the transmitting agency agree could be lawfully decided on the papers.

The Clerk will send out a notice of hearing to the parties, along with a certification to be completed by the party requesting the hearing. If a party wishes to proceed on the papers, a completed certification, together with any statements, records and documents which the party would like the judge to consider, must be returned to the Clerk no later that 10 days before the hearing date. The case is then assigned to a judge for a decision based upon the record.

4. Public Nature of Hearings

Evidentiary hearings, proceedings on motions and other applications are conducted as public hearings, except when prohibited by statute, rule or regulation (such as in Special Education cases and in cases involving the Department of Human Services), or by order of a judge for good cause shown. In deciding whether to make an exception to the public hearing standard, the judge considers the requirements of due process and public policy, along with the need to protect against disclosure of sensitive information or trade secrets. Even where confidentiality is mandated by statute, it may be necessary to balance the requirement for confidentiality with the public right to access to information. *Division of Youth and Family Services*, 340 N.J. Super. 126, 773 A.2d 1191 (App. Div. 2001).

5. Verbatim Record

All proceedings before the judge are recorded. If a party or an agency requests a court reporter, one will be provided and the requesting entity will be required to pay the costs. If no one requests a court reporter, the proceeding will be tape recorded. Transcription of either method of recording is available at the party's expense. Duplicate audiotapes are free if the parties provide blank tapes. Prehearing conferences, settlement discussions and informal discussions either immediately preceding the hearing or held during the hearing to facilitate the expeditious conduct of the case may be recorded at the discretion of the judge.

6. Appearances and Representation

Parties may appear *pro se*, be represented by an attorney, or be represented by non-lawyers authorized to appear in contested cases by the OAL representation rules, N.J.A.C. 1:1-5, which are authorized by R. 1:21-1(e).

The OAL also permits *pro hoc vice* appearances by out-of-state attorneys provided that all pleadings, briefs and other papers are signed by a New Jersey attorney. The New Jersey attorney is held responsible for the papers and must be present at all times during the proceeding unless excused by the judge. An out-of-state attorney seeking admission must comply with the requirements of R. 1:21-2 including payment to the Clients' Security Fund and Ethics Financial

Committee. Forms for *pro hoc vice* appearance are found on the OAL website at www.state.nj.us/oal.

7. Conduct of Lawyers, Judges and Agency Personnel

The rules of conduct governing lawyers contained in the New Jersey Court Rules also govern the conduct of lawyers in administrative proceedings. The Code of Judicial Conduct for Administrative Law Judges governs the conduct of the judges. N.J.A.C. 1:1-1.5.

Ex parte communication with judges concerning impending proceedings or evidence is prohibited. When *ex parte* communications are unavoidable, the judge or agency head must notify all parties of the communication as soon as possible.

If an agency or a member of an agency's staff is a party to a contested case, the legal representative appearing and acting for the agency in the case may not discuss any matter except settlement with the agency head and may not participate in making or preparing the final decision in the case.

8. Interpreters (N.J.A.C. 1:1-14.3.)

Any party, at his or her own cost, may obtain an interpreter to present evidence. The judge may determine that the interpreter is able to give adequate assistance to the witness in conveying information to the court.

Interpreters for the hearing impaired will be paid by the transmitting agency rather than the party.

9. Sanctions

If a party fails to comply with a judge's order or with any of the requirements set by the OAL's rules, the judge may dismiss or grant the motion or application, suppress a claim or defense, exclude evidence, require costs to be paid or take other appropriate action. N.J.A.C. 1:1-14.4(c).

If a party's conduct obstructs the conduct of the hearing, the judge may impose a fine of up to $1,000 after providing the party or attorney with notice and an opportunity for explanation if the conduct was personally observed by the judge or by order to show cause when the conduct does not require immediate adjudication or did not occur in the judge's presence. N.J.A.C.1:1-14.14; N.J.S.A. 52:14F-5u.

If, during a case, an issue is raised concerning an attorney's ethical or professional conduct, the presiding judge will consider the merits of the issues and rule as to whether the attorney may appear or continue representation. Where required by the Rules of Professional Conduct or the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-12 *et seq.*), the judge may disqualify an

attorney from participating in a particular case. If disciplinary action is indicated, the matter is referred to the appropriate disciplinary body.

L. EVIDENCE RULES
(N.J.A.C. 1:1-15)

1. Generally

In contested case hearings, parties are not bound by statutory or common law rules of evidence or any formally adopted court rules, except where specifically stated in the Uniform Administrative Procedure Rules.

2. The OAL and N.J.R.E. 403

All relevant evidence including hearsay is admissible. However, the judge may, in his or her discretion, exclude evidence if its probative value is outweighed substantially by the risk that its admission will either consume an undue amount of time or create substantial danger of confusion or undue prejudice.

3. Privilege

The rules of privilege recognized by law or contained in the following New Jersey Rules of Evidence shall apply in contested cases to the extent permitted by the context and similarity of circumstances: N.J.R.E. 501 (Privilege of Accused); N.J.R.E. 502 (Definition of Incrimination); N.J.R.E. 503 (Self-incrimination); N.J.R.E. 504 (Lawyer-Client Privilege); N.J.S.A. 45:14B-28 (Psychologist's Privilege); N.J.S.A. 2A:84-22.1 *et seq.* (Patient and Physician Privilege); N.J.S.A. 2A:84A-22.8 and N.J.S.A. 2A:84A-22.9 (Information and Data of Utilization Review Committees of Hospitals and Extended Care Facilities); N.J.S.A. 2A:84A-22.11 *et seq.* (Rape Counselor Privilege); N.J.R.E. 508 (Newsperson's Privilege); N.J.R.E. 509 (Marital Privilege-Confidential Communications); N.J.S.A. 45:8B-29 (Marriage Counselor Privilege); N.J.R.E. 511 (Priest-Penitent Privilege); N.J.R.E. 512 and 610 (Religious Belief); N.J.R.E. 513 (Political Vote); N.J.R.E. 514 (Trade Secret); N.J.R.E. 515 (Official Information); N.J.R.E. 516 (Identity of Informer); N.J.R.E. 530 (Waiver of Privilege of Contract or Previous Disclosure; Limitations); N.J.R.E. 531 (Admissibility of Disclosure Wrongfully Compelled); N.J.R.E. 532 (Reference to Exercise of Privileges); and N.J.R.E. 533 (Effect of Error in Overruling Claim of Privilege).

4. Official Notice (N.J.A.C. 1:1-15.2)

The administrative law judge may take official notice of facts as provided in Rule 201 of the New Jersey Rules of Evidence. Notice may also be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or judge. The parties are notified and given an opportunity to contest the material noticed.

5. Expert Witnesses and Opinion Testimony (N.J.A.C. 1:1-15.9)

Expert testimony must be based upon facts or data which are perceived by or made known to the witnesses before or at the hearing. The facts and data relied upon by the expert need not be admissible in evidence if these facts and data are of the type reasonably relied upon by experts in the field in forming opinions and inferences. Before testifying, the expert witness may be examined concerning the data upon which his or her opinion or inference is based. Questions need not be in hypothetical form unless directed by the presiding judge and testimony which embraces the ultimate issue(s) before the judge is not objectionable on that basis.

6. Hearsay Evidence and the Residuum Rule

Hearsay evidence is admissible in the trial of contested cases in the OAL. Hearsay evidence is accorded whatever weight the judge deems appropriate in light of the nature, character and scope of the evidence. Although hearsay evidence is admissible, the "residuum rule" requires that some legitimately competent evidence must exist to support each ultimate finding of fact reliably and without the appearance of arbitrariness. The residuum rule was expressed in *Weston v. State*, 60 N.J. 36 (1972), and is codified in the OAL rules at N.J.A.C. 1:1-15.5. One exception is Casino Control Commission cases. The residuum rule does not apply in proceedings under the Casino Control Act because that law contains a specific provision permitting the use of all relevant evidence. *See, Div. of Gaming Enforcement v. Merlino and Leoneti*, 216 N.J. Super. 579 (App. Div. 1987).

7. Authentication Requirements and Content of Writings (N.J.A.C. 1:1-15.6)

Writings are presumed to be authentic if disclosed to all parties at least 10 days before the hearing. At the hearing, questions concerning authenticity may be raised. If the question is genuine, authentication in the form of an affidavit, certified-document or similar proof may be required. Such proof must be submitted no later than ten days after the hearing.

M. INTERLOCUTORY REVIEW
(N.J.A.C. 1:1- 14)

1. Orders Reviewable

Orders and rulings of an administrative law judge are subject to interlocutory review by an agency head upon request of a party.

2. Time Frame to Seek Review

A request for interlocutory review must be made to the agency head within five working days from the date of the order or ruling sought to be reviewed. While most orders may be reviewed interlocutorily or at the end of the contested case, due to the potential waste of judicial

and litigant resources if these issues are not reviewed until after the conclusion of the hearing, certain orders which are reviewable by the Director of the OAL (*see* discussion below), *i.e.*, orders regarding recusal, attorney disqualification, *pro hoc vice* appearance, non-lawyer representation and hearing location, must be appealed interlocutorily or the right to review will be waived.

3. Format of Papers

Requests for interlocutory review must be in writing by memorandum, letter or motion. A copy of the ruling or decision sought to be reviewed must be included. The party requesting interlocutory review must furnish the agency head with all other papers, materials, transcripts, or parts of the record pertaining to the request for interlocutory review. Copies of all documents submitted to the agency head must be filed with all parties, the judge, and the Clerk of the OAL.

4. Agency Decision to Review

The agency head must notify the parties and the Clerk of the OAL within ten working days of the request for interlocutory review whether the order or ruling will be reviewed. The agency head may use informal means of notice, such as telephone or in person communication, to satisfy the notice requirements, provided that a written communication or order promptly follows. If the agency head does not give notice within ten days, the request for interlocutory review is considered denied.

5. Additional Submissions

Within three days of receiving notice that an agency head has granted interlocutory review, a party may submit written arguments in support of the judge's order or ruling to the agency head.

If the proceeding in question has been sound recorded and the agency head requests the verbatim record, the Clerk of the OAL will furnish the original or a certified copy of the tape recording within one day of the request.

6. Agency Action on Interlocutory Appeal

If the agency head grants the request for interlocutory review, he or she must issue a decision, order or other disposition of the review no later than twenty days from receiving the request for review. If required, in the interest of justice, the agency head will conduct an interlocutory review on an expedited basis. If the agency head does not issue an order within twenty days, the judge's ruling is considered conditionally affirmed.

Any order or ruling reviewable under this rule is also 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.

Certain orders or rulings of a judge are reviewable by the Director of the OAL as an agency head. The qualification of an attorney to appear in a contested case hearing was recognized as an issue within the jurisdiction of the Director of the OAL since it directly affected the integrity and independence of the agency, rather than directly relating to the merits of the case. *In the Matter of Onorevale*, 103 N.J. 548 (1986. *See also*, *Wood v. Department of Community Affairs*, 243 N.J. Super. 187 (App. Div. 1990). Also, the authority of the administrative law judges to impose, and the Director to rule upon appeals involving the assessment of sanctions imposing costs or assessments, was affirmed in *In Re Timofai Sanitation Co., Inc., Discovery Dispute*, 252 N.J. Super. 495 (App. Div. 1991).

Issues which must be reviewed by the OAL Director are:

1. Disqualification of a judge to preside over a particular case;

2. The appearance of, and conditions or limitation placed upon a non-lawyer representative;

3. Sanctions imposing costs or assessments;

4. Disqualification of attorneys; and

5. Establishment of hearing location.

6. *Pro Hac Vice* Appearance

These issues must be first raised with the presiding administrative law judge. Except for rulings regarding sanctions, orders reviewable by the Director of the OAL must be appealed interlocutorily. A party may not seek review after the judge issues the initial decision.

N. INITIAL DECISIONS
(N.J.A.C. 1:1-18)

1. Types

a. After Hearing

After the conclusion of an OAL hearing, the judge issues an initial decision, or in the case of a special education matter, a final decision. In either case, the decision is based exclusively on

evidence and arguments presented during the hearing. This decision is made part of the record along with stipulations of fact and matters officially noticed.

b. Summary Decision

Any summary decision rendered by an administrative law judge, (pursuant to N.J.A.C. 1:1-12.5) which fully disposes of the case is treated as an initial decision.

c. Settlement

If the parties in a contested case wish to settle the matter by consent and the agency which transmitted the case to the OAL is not a party to the case, the settlement terms and the judge's subsequent order are treated as the initial decision in the case.

2. Format

The initial decision contains the following:

1. An appropriate caption;
2. The appearances of the parties and their representatives;
3. A short statement of the case;
4. A procedural history;
5. A statement of the issues;
6. A factual discussion;
7. A factual finding;
8. A legal discussion;
9. Conclusions of law;
10. A disposition;
11. A list of exhibits admitted into evidence; and
12. The following statement: "This recommended decision may be adopted, modified or rejected by (the head of the agency), who by law is empowered to make a final decision in this matter. However, if (the head of the agency) does not so act in

forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10."

3. Time for Issuance

The initial decision must be filed with the agency head within 45 days of the closing of the record. N.J.S.A. 52:14B-10. This period is reduced in specific instances by state statute or by federal requirements. For example, an initial decision must be issued within 20 days after hearing in lemon law cases, N.J.S.A. 56:12-29 et seq. or within 45 days of the hearing request in special education cases. 34 C.F.R. 300.512. The agency will acknowledge receipt of the decision at the time of delivery. A copy of the agency receipted decision is then mailed to the parties.

For good cause shown, the forty-five-day time limit may be extended. If so, an Order of Extension signed by both the agency head and the Director and Chief Administrative Law Judge, is issued and mailed to the parties.

O. SETTLEMENTS
(N.J.A.C. 1:1-19)

1. Conferences

Early settlement programs are conducted at the OAL in Civil Service, Community Affairs, and Alcoholic Beverage Control cases. In these matters, settlements conferences are scheduled promptly after filing with the OAL. Should the conference not be successful, a different administrative law judge will be assigned to the hearing.

Additionally, the presiding judge may conduct settlement discussions whenever he or she believes it may be appropriate.

2. Conclusion

When the agency which transmitted the matter is not a party, the settlement terms are incorporated as an attachment to the initial decision. The parties must either submit a letter of stipulation signed by both parties consenting to the settlement terms or must express the settlement terms on the record. The initial decision settlement is subject to agency head review in the same manner as any other initial decision.

When the agency which transmitted the matter is a party and has consented to the settlement terms, the parties must submit either a stipulation of dismissal or, if they wish the settlement terms to be part of the record, a consent order setting forth the terms of the settlement. The stipulation or consent order is deemed to be the final decision in the case.

P. WITHDRAWALS
(N.J.A.C. 1:1-19)

A party may withdraw a request for a hearing at any time for any reason by notifying the judge and all other parties. The matter is then returned to the transmitting agency for appropriate disposition.

Q. FAILURE TO APPEAR
(N.J.A.C. 1:1-14.4)

Parties and/or their representatives, are required to "appear" as directed in a hearing notice, whether it be to be present at a hearing, be available for a conference telephone call, or place a telephone call. If a party or representative fails to appear, the judge will hold the case for one day, during which time the non-appearing party must offer an explanation for the non-appearance. The explanation must then be submitted in writing, with copies to the other parties.

If a written explanation is received, the other parties will have an opportunity to respond.

If, upon a review of the written excuse and any responses thereto, the judge determines that there was good cause for the failure to appear she or her will reschedule the hearing.

If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and issue an initial decision explaining that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following:

1. 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;

2. The payment by the delinquent representative or party of reasonable expenses, including the attorney's fees, to an aggrieved representative or party; or

3. Such other case-related action as the judge deems appropriate.

If no explanation is received, the case will be returned to the transmitting agency for appropriate disposition.

IV. AFTER THE INITIAL DECISION

A. EXCEPTIONS
(N.J.A.C. 1:1-18.4)

1. Time for Filing

Parties in contested cases have thirteen days from the mailing date of the judge's initial decision in which to file exceptions to the decision. Exceptions are filed with the agency head. A copy must be served upon all other parties and the judge.

The time limit for filing exceptions and replies may be extended. A request by a party for an extension must be in writing to the agency head, with a copy to the other parties. The request must show good cause, include a proposed form of order, and be made prior to the end of the time period.

An extension is granted by Order of Extension signed by the agency head.

2. Format

Exceptions must be in writing and must indicate specific portions of the record to which exception is taken. Exceptions must designate the portions of the record relied upon in support of the exception and must incorporate specific findings of fact, conclusions of law or decisions proposed in lieu of those reached by the judge or in addition to the judge's decision. If a party takes exception to a legal conclusion, the party must briefly state the authority relied upon and must set forth conclusions suggested in lieu of the stated conclusion. If a party excepts to a judge's order or other disposition, the party must include a suggested form of order. Reasons supporting exceptions may be included in a separate brief or in the document noting the exception. If briefs or statements were submitted during the hearing, the exception may incorporate by reference the relevant portions of those papers.

In *In re Morrison*, 216 N.J. Super. 143 (App. Div. 1987), the court ordered that a party filing exceptions which challenge material and genuine factual findings contained in an initial decision is to supply the agency head with relevant portions of a transcript of the hearing. It also places a burden on the agency head to review the transcript before rendering its final decision. If a transcript is required but not furnished, the agency head may disregard the party's exceptions which relate to the omission. However, after *Morrison*, another Appellate Division panel decided *B.C. v. Cumberland Reg. School Dist.*, 220 N.J. Super. 214 (App. Div. 1987), in which it was held that the agency head did not err in reversing an administrative law judge initial decision without reviewing a transcript of the hearing. *B.C.* cited but did not overrule or distinguish *Morrison*. Therefore, there are conflicting Appellate Division rulings on the need for transcripts to be reviewed with exceptions.

Exceptions must be filed within 13 days of the date of mailing of the Initial Decision. Copies must be filed with the other parties and the judge. Evidence not presented at the hearing may not be submitted with exceptions, nor referenced or incorporated therein.

3. Replies

A party has five days from receipt of an exception to file a reply to the exception. Replies must be in writing and filed with the agency head, with a copy to the judge and all other parties. Cross-exceptions or submissions in support of the initial decision may be included in the replies.

B. FINAL DECISIONS
(N.J.A.C. 1:1-18)

1. Statutory Period for Final Agency Action

The agency head has forty-five days from receipt of the initial decision to enter an order or final decision adopting, rejecting or modifying the initial decision. The final decision is then served on the parties and the Clerk of the OAL.

The agency head may reject or modify the findings of fact, conclusions of law, or interpretations of agency policy in the decision, but must clearly state the reasons for so doing. Further, the agency head may not reject findings of fact as to issues of credibility of lay witnesses unless it determines from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record. In rejecting or modifying findings of fact, the agency head must state with particularity the reasons for the rejection or modification, and must make findings supported by sufficient, competent and credible evidence in the record. N.J.S.A. 52:14B-10(c).

If the agency head does not reject or modify an initial decision within forty-five days or within the extension period if an extension has been granted, the initial decision becomes a final decision.

An agency is permitted to issue a written copy of a final decision outside the statutory time frame as long as the decision was made within the time period. However, where an agency did not issue a decision within the forty-five day time frame or seek an extension, but summarily rejected the initial decision six days later and issued the finding of fact and conclusions of law three months later, the initial decision was deemed approved as the final decision. *Mastro v. Board of Trustees of the Public Employees' Retirement System*, 266 N.J. Super. 445 (App. Div. 1993). *See also Capone v. New Jersey Racing Commission*, 358 N.J. Super. 339 (App. Div. 2006).

2. Procedures to Extend Statutory Period for Agency Action

The time limits for agency receipt of the initial decision and for issuing an order or final decision may be extended upon certification by both the Director of the OAL and the agency head

that good cause exists. Requests for extensions must be submitted prior to the expiration of the relevant time period and a copy of any Form of Order or request for extension of time period must be served upon each party.

3. Appeals (New Jersey Court Rule 2:2-3)

Review of a final decision of a state administrative agency must first be sought in the Appellate Division of the Superior Court. The Appellate Division's jurisdiction extends to review of all quasi-judicial, judicial, ministerial or discretionary agency action. The only agency matters specifically excepted from Appellate Division review are tax matters (*see* R. 8:2) and Wage Collection Section appeals (*see* R. 4:74-8).

4. Appeals in Special Education Cases

When a case concerns matters arising out of the Special Education Program of the Department of Education or Section 504 of the Rehabilitation Act of 1974, the decision of the administrative law judge is the final decision. Any party may appeal the decision of the judge either to the Law Division of the Superior Court or to a United States District Court.

5. Enforcement of Agency Final Decisions

Agency final decisions may be enforced in a trial division of the Superior Court in an action brought pursuant to R. 4:67, or in any other court having statutory jurisdiction over the subject matter. The validity of an agency order is generally not justiciable in an enforcement proceeding.

V. RULEMAKING

A. WHAT IS A RULE?

In common usage, a rule is an "authoritative directive for conduct." Websters II New College Dictionary 968 (1995).

The Administrative Procedure Act at N.J.S.A. 52:14B-2(e) defines the term "administrative rule" or "rule" as follows:

> (e) "Administrative rule" or "rule," when not otherwise modified, means each agency statement of general applicability and continuity effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intraagency and interagency statements; and (3) agency decisions and findings in contested cases.

N.J.A.C. 1:30-1.2 incorporates by reference the definition provided in N.J.S.A. 52:14B-2(e).

"One of the most critical aspects of an administrative rule is that it have both `general applicability and continuing effect.' *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313, 382 (1984) (quoting N.J.S.A. 52:14B-2(e)). *See, e.g., Crema v. New Jersey Department of Environmental Protection*, 94 N.J. 286 (1983)." *Board of Education, of City of Plainfield v. Cooperman*, 209 N.J. Super. 174, 203 (App. Div. 1986).

The Court in *Metromedia* stated that "an agency determination can be regarded as a `rule' when it effects a material change in existing law. *See, Crema, supra*, 94 N.J. at 302; K.C. Davis, *Administrative Law Treatise* § 7:25 at 186 (2d ed. Supp. 1982); *Ford Motor Co. v. Federal Trade Commission*, 673 F.2d 1008, 1009 (9th Cir. 1982), *cert. denied*, 459 U.S. 999 (1982) (an agency determination that changes existing law and has widespread application must be addressed by rulemaking and not adjudication)." *Metromedia, supra*, 97 N.J. at 330.

Two New Jersey Supreme Court decisions since *Metromedia* have further analyzed the question, "What is a rule?" *See, Department of Environmental Protection v. Stavola, t/a Driftwood Cabana*, 103 N.J. 425 (1986) and *In the Matter of the Request for Solid Waste Utility Customer Lists*, 106 N.J. 508 (1987).[1]

---

[1]A discussion of *Metromedia* and subsequent cases is contained in Chapter 2, Rulemakings by Administrative Agencies, in *Administrative Law and Practice* (second edition) by Stephen L. Lefelt *et al.* (New Jersey Practice, Vol. 37, West Publishing Co., 2000).

B. AUTHORITY TO RULEMAKE

In *D.S. v. Board of Educ. of East Brunswick Tp.*, 188 N.J. Super. 592 (App. Div. 1983), the State Board of Education provided that the residential costs of placing handicapped children in special education facilities would be assumed by the public agency which placed the children in the facility. In affirming this rule, the Appellate Division emphasized that the State Board of Education possesses broad rulemaking powers and that the Legislature expressly delegated such powers to the Board. In its discussion of the relevant statutes, the Court observed that the Board was enabled to make rules for its own governance, as well as for the implementation of the school laws of New Jersey. Moreover, statutory language was cited which provided that the Board had all powers, in addition to those specifically provided by law, which were requisite to the performance of its duties. The Court also relied upon statutory language which provided that general supervision of public education (except higher education) was vested in the State Board.

Mulligan v. Wilson, 110 N.J. Super. 167 (App. Div. 1970), held that the grant of express power by the Legislature is always attended by such incidental authority as is fairly and reasonably necessary or appropriate to make it effective, and that the authority granted to an administrative agency should be constructed to permit the fullest accomplishments of the legislative intent. The *Mulligan* opinion held that a height requirement, determined by the Department of Civil Service, for eligibility of city police officers, was proper, although neither the Civil Service Act nor the rules of the Civil Service Commission contained height requirements for officers.

In *New Jersey Ass'n. of Health Care Facilities v. Finley*, 168 N.J. Super. 152 (App. Div. 1979), *aff'd, Matter of Health Care Administrative Board*, 83 N.J. 67 (1980), *cert. denied, appeal dismissed, Wayne Haven Nursing Home v. Finley*, 449 U.S. 944 (1980), the validity of administrative rules of the Department of Health, which mandated the availability of a reasonable number of beds for indigent patients as a condition of licensure for nursing homes was challenged. In concluding that the rules were valid, the Appellate Division held, *inter alia*, that it was beyond dispute that the enabling legislation, N.J.S.A. 26:2H-1, which concerned "License and Regulation," imposed upon the Department of Health the comprehensive responsibility for developing and administering the legislative policy of ensuring health care services that met the needs of the population. Furthermore, it was evident that the Legislature's goal could not be limited solely to certificate of need or licensing matters. The Court noted that in its role as the one state agency charged with comprehensive planning in the health field, the Department:

> must strive to achieve the objectives of the National Health Planning and Resources Development Act . . . which includes equal access by all people to quality health care services . . . it is well-settled that declaration of public policy in enabling legislation can serve as sources of authorization for regulations related to the furtherance of that policy. *In re Promulgation of Practice*, 132 N.J. Super. 45, 49 (App. Div. 1974), *cert denied*, 67 N.J. 95 (1975). Declaration of legislative policy is couched in such broadly comprehensive terms."

Finley, 168 N.J. Super. at 162.

The *Finley* court pointed out that the grant of authority to an administrative agency should receive a liberal construction so that the agency might fulfill the responsibilities delegated to it by statute. Moreover, courts should readily imply the existence of such incidental administrative powers, especially in a case where the task of the agency is to protect the public health and welfare.

In *A.A. Mastrangelo, Inc. v. Commissioner of Dept. of Environmental Protection*, 90 N.J. 666 (1982), it was held that the existence of statutory authority in the enabling legislation will not foreclose administrative action where, by reasonable implication, that action can be said to promote or advance policies and findings that served as a driving force behind the enactment of the legislation. Moreover, the court stressed that in determining the validity of a particular administrative action a reviewing court should examine not only the enabling legislation, but should examine the entire statute in view of its surroundings and objectives. *Mastrangelo*, 90 N.J. at 683, citing *New Jersey Guild of Hearing Aid Dispensers v. Long*, 75 N.J. 544 (1978).

In *Mastrangelo*, solid waste collection corporations, as well as a county, city and borough, attacked Department of Environmental Protection rules governing the redirection of waste flow streams. It was held that the Department was within its statutory mandate in promulgating interdistrict waste flow rules insofar as the rules authorized it generally to direct the interdistrict flow of solid waste streams. That authority was derived from those incidental powers that were necessary to effectuate fully the purpose behind the enabling legislation.

C. IMPLEMENTING STATUTES THROUGH RULEMAKING

An administrative agency's authority "consists of the powers expressly granted which in turn are attended by those incidental powers which are reasonably necessary or appropriate to effectuate the specific delegation." *In re Regulation F-22, Office of Milk Industry*, 32 N.J. 258, 261 (1960).

A delegation of authority to an administrative agency is construed in a manner that permits the fullest accomplishment of the legislative intent, and the purpose of the statute should not be frustrated by an unduly narrow interpretation. *Hyland v. Ponizo*, 159 N.J. Super. 223 (App. Div. 1978).

As was stated in *General Assembly v. Byrne*, 90 N.J. 376, 386 (1982), "the chief function of executive agencies is to implement statutes through the adoption of coherent regulatory schemes." The court additionally emphasized that:

> The function of promulgating administrative rules and regulations lies at the very heart of the administrative process. *Cammarata v. Essex County Parks Commission*, 26 N.J. 404, 410 (1958). *See also, Abelson's Inc. v. N.J. State Board of Optometrists*, 5 N.J. 412, 423 (1950). Rulemaking allows the agency to further the policy goals of legislation by developing coherent and rational codes of conduct, "so those concerned may know in advance all the rules of the game, so to speak, and may act with reasonable assurance." *Boller Beverages, Inc. v. Davis*, 38 N.J. 138,

> 152 (1962). We have recognized that the administrative agencies are the arms of the executive branch of government through which it executes the laws passed by the Legislature. Agencies regulate through their delegated power to promulgate rules and regulations.

General Assembly, 90 N.J. at 385.

It is well-settled that our courts look favorably upon the power of administrative agencies to promulgate rules which further the purposes for which the agencies were created. *See, State v. Hubschuman*, 81 N.J. Super. 452 (Law Div. 1963).

The delegation of authority to an administrative agency is liberally construed, so that the agency may perform its statutory responsibilities. *Matter of Egg Harbor Associates*, 94 N.J. 358 (1983). Furthermore, the courts readily imply such incidental administrative powers as are necessary to carry out the legislative intent. *New Jersey Ass'n of Health Care Facilities v. Finley*, 168 N.J. Super. 152 (App. Div. 1979), *aff'd, Matter of Health Care Administrative Board*, 83 N.J. 67 (1980), *cert. denied, appeal dismissed, Wayne Haven Nursing Home v. Finley*, 449 U.S. 994 (1980). *Accord, Newark Board of Ed. v. Newark Teachers Union, Local 481, AFT, AFL-CIO*, 152 N.J. Super. 51 (App. Div. 1977); *In re Cable Television*, 132 N.J. Super. 45 (App. Div. 1974); *A.A. Mastrangelo, Inc. v. Commissioner of Department of Environmental Protection*, 90 N.J. 666 (1982); *In re Tugender*, 186 N.J. Super. 178 (App. Div. 1982).

1. Rulemaking v. Adjudication

Adjudications usually determine the legal rights and relations of specific individuals, *see Bally Mfg. Corp. v. New Jersey Casino Control Comm'n.*, 85 N.J. 325, 340 (1981), or a limited group of individuals. These determinations frequently concern a disputed factual question, *see Id.* at 340; and frequently require evidence and cross-examination in an adversary proceeding. N.J.S.A. 52:14B-9(c), 10(a). Typically, the APA calls adjudications "contested cases." N.J.S.A. 52:14B-2(b).

Generally, administrative rulemaking proceedings involve broader judgments. Rulemaking proceedings seek to develop facts through investigation or public hearing so that rules of prospective application may be developed. *See*, Shapiro, *Rulemaking or Adjudication*, 78 Harv. L. Rev. 921, 935 (1965). Although rules generally apply to a large class of individuals, it is also possible for rulemaking to affect specific parties. *See, Bally Mfg. Corp. v. New Jersey Casino Control Comm'n.*, 85 N.J. at 343; and Shapiro, *Rulemaking or Adjudication*, 78 Harv. L. Rev. at 924.

An administrative agency has wide discretion in selecting the means to fulfill its legislatively delegated duties. *Texter v. Human Services Dept.*, 88 N.J. 376 (1982). An agency may act either through rulemaking or adjudication and may use its informed discretion in choosing which course to take. *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947); *In re Kallen*, 92 N.J. 14, 21 (1983). The "function of filling in the interstices of the Act should be performed, as much as

possible, through this quasi-legislative promulgation of rules to be applied in the future." *Chenery Corp.*, 332 U.S. at 202. When an agency is concerned with broad policy issues which affect a) the public at large; b) an entire field of endeavor; c) important areas of social concern; or d) when the contemplated action is intended to have wide application and prospective effect, rulemaking is a suitable mode of proceeding. *Crema v. New Jersey Department of Environmental Protection*, 94 N.J. 286 (1983); *In re Kallen*, 91 N.J. 14 (1983).

In *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313 (1984), the New Jersey Supreme Court listed several "relevant factors" in determining in any given case whether the essential agency action must be rendered through rulemaking or adjudication. Those factors are whether the agency determination:

> (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.

Id. at 331.

It is not yet clear how many or what combination of the *Metromedia* factors are required, at a minimum, to foreclose adjudication as a valid means of making or changing law or policy. Of course, if all six of those factors are satisfied, the agency action must be rendered through rulemaking rather than through adjudication. *Woodland Private Study Group v. State of New Jersey, Department of Environmental Protection*, 209 N.J. Super. 261, 264 (App. Div. 1986). The Court in *Metromedia* noted that the various factors could be balanced even if some were applicable and others were not. *Metromedia*, 97 N.J. at 331-32. In any event those factors do provide a useful and complete checklist to be used when determining whether an agency has abused its discretion by making law through adjudication rather than through rulemaking.

In *Airwork Service Division, etc. v. Director, Division of Taxation*, 97 N.J. 290 (1984), the Court held that since the tax statute was sufficiently specific the determination in the form of a tax assessment did not require an antecedent rule. The Court found that the taxability of the services was authorized and sufficiently inferable from the tax statute itself. This was the fourth "relevant factor" listed in *Metromedia* for determining whether the agency action can be rendered through adjudication rather than rulemaking.

Before *Metromedia*, the courts normally deferred to the agency's choice as to whether to proceed by rulemaking or adjudication so long as the selection was responsive to the purpose and function of the agency. *Bally Mfg. Corp. v. New Jersey Casino Control Comm'n.*, 85 N.J. 325, 341 (1981). Most agencies thus felt reasonably confident that their choice between adjudication and rulemaking would be unassailable.

Often, therefore, agencies would focus on practical considerations to choose whether to proceed by rulemaking or adjudication. Rulemaking, for example, permits an agency to craft into one rule a number of policy elements and to apply the rule as widely as it wishes. Furthermore, when proceeding by rulemaking an agency may receive input from the general public and is not restricted to the parties in a contested case proceeding. In addition, rulemaking can be more efficient and less costly than proceeding through case by case adjudications. Rulemaking generally results in well publicized policy determinations providing fairer notice to the public. Finally, rulemaking ensures greater certainty and finality as to the validity of the rule since any objections to a rule that could have been raised at the time of the rulemaking proceeding may be precluded later by a court unless they were raised during the rulemaking proceeding. *Bergen Pines County Hospital v. New Jersey Department of Human Services*, 96 N.J. 456 (1984). In *Bergen Pines*, the Court stated, "[t]o permit a party in court to raise objections to a rule and to submit evidence concerning those objections that it failed to raise before the administrative agency at the appropriate time would be to undermine the very purpose of administrative agencies." *Id.* at 474. The Court thus indicated that issues and evidence must be raised before the agency or the right to raise them is waived. Adjudication, however, avoids the increasing procedural complexities of rulemaking. Furthermore, it may sometimes be quicker to change policy in an adjudication than by rulemaking. In addition, proceeding by adjudication permits a slow development of policy and precludes the need to predict a variety of possibilities.

2. Liberal Construction of Rulemaking Powers

In *Terry v. Harris*, 175 N.J. Super. 482 (Law Div. 1980), it was held that the policy of New Jersey is one of encouraging administrative agencies to utilize their rulemaking powers and not to permit them to remain idle when the fair and timely exercise of such power may well avoid additional burdens upon the system which they are authorized to regulate. In the *Terry* case, administrative agencies were likened to legislative bodies when dealing with proposed regulations under a grant of power.

Similarly, it was held in *Esso Standard Oil Co. v. Holderman*, 75 N.J. Super. 455 (App. Div. 1962), *aff'd*, 39 N.J. 355 (1963), *appeal dismissed*, *Humble Oil & Refining Co. v. Male*, 375 U.S. 43 (1963), that the evidence established a *prima facie* reasonable relationship between the imposition of an accident reporting requirement on the part of self-insured employers and the proper performance by the Commissioner and the agencies under his jurisdiction of their statutory duties and obligations, so as to justify the finding that he possessed the statutory authorization to promulgate the requirements in question.

To ascertain the presence of statutory authorization for an administrative action, a court looks beyond the specific language of the delegating statute to its objective. The entire statute may be scrutinized in light of its surroundings and objectives in order to gain an understanding of whether authority to act has been implicitly granted. *D.S. v. Board of East Brunswick Tp.*, 188 N.J. Super. 592 (App. Div. 1983).

It has been repeatedly emphasized by our courts, however, that administrative rules must be within the fair contemplation of the delegation of power which is enumerated in the enabling statute. *See, e.g., New Jersey Guild of Hearing Aid Dispensers v. Long*, 75 N.J. 544 (1978); *D.S. v. Board of Education of East Brunswick Tp.*, 188 N.J. Super. 592 (1983); *Wells v. Taxation Div. Director*, 3 N.J. Tax 420 (Tax Ct. 1981).

D. *NEW JERSEY REGISTER* AND *NEW JERSEY ADMINISTRATIVE CODE*

The *New Jersey Register* is a semi-monthly official publication of the Office of Administrative Law which contains all proposals and adoptions of rules promulgated pursuant to the New Jersey Constitution, N.J. Const. (1974), Art. V, § 4, ¶ 6, and the Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.* The *Register* also contains agency public notices and Governor's Executive Orders and Reorganization Plans. The contents of the *Register* are divided into two main sections: one, which includes the text of all proposals arranged by agency name and proposal subject; and the other, which includes the full text of all adoptions, likewise arranged by agency name. Each individual *Register* includes a listing, by agency, of the proposals, adoptions and public notices that are published in that issue.

Each *Register* also includes a Cumulative Index of Rule Proposals and Adoptions, which is a complete listing of all active rule proposals and all new adoptions promulgated after the latest update to the *New Jersey Administrative Code.* This listing is arranged by agency and by citation order. The listing includes a brief description of the adoption or proposal, the date of the proposal, the volumes and pages of the *Register* in which the proposal and adoption were published, and a document citation.

The *New Jersey Administrative Code* (N.J.A.C.) is the official publication of the Office of Administrative Law which contains all effective rules adopted by agencies. Each agency's body of rules is codified in a title of the *Code.* Each title contains a chapter table of contents and an index. Each individual chapter likewise contains a table of contents. The *Code* is annotated to provide the reader with a complete context in which to analyze the rules. Annotations include:

1. legislative authority for the rulemaking;

2. source and effective date of the rules;

3. historical notes which discuss prior regulatory activity;

4. chapter expiration date; and

5. case notes (listings of salient New Jersey Court and OAL cases, Formal Attorney General Opinions and law review articles).

E. SUBMISSION OF AGENCY RULES TO THE OFFICE OF ADMINISTRATIVE LAW

All State agency rulemaking activities must be submitted to the Office of Administrative Law for review of technical, substantive and legal conformance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.*, and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30. Thus, all rulemaking notices required to promulgate a rule are submitted to the Office of Administrative Law. The two salient features of a rulemaking proceeding are the procedures for proposing a rule and the procedures for adopting a rule (N.J.A.C. 1:30-1.2, Definitions).

1. Proposed Rules

Rule proposal is the initial rulemaking proceeding in which an agency submits a notice of proposal to the Office of Administrative Law for acceptance, filing and publication in the *New Jersey Register.* The rule activity may include a proposed new rule (Sample A, p. 76), a proposed amendment to modify, alter, or revise an existing rule (Sample B, p. 78), the repeal of an existing rule, or a proposed readoption. In all instances, the agency proposing the rulemaking must comply with the proposal procedure.

The APA was amended at N.J.S.A. 52:14B-3(4) by P.L. 2001, c. *5,* §1 to require each agency to publish in the *New Jersey Register* a quarterly calendar setting forth a schedule of the agency's anticipated rulemaking proposals for the next six months. The calendar shall include the name of the agency and agency head, a citation to the legal authority authorizing the rulemaking action, a synopsis of the subject matter and the purpose or objective of the agency's proposal, and the month and year in which publication of the proposal in the *New Jersey Register* is anticipated. *See,* N.J.A.C. 1:30-3.1. A notice of proposal cannot be published in the *New Jersey Register* unless it substantively conforms to its calendar listing or qualifies for one of five exceptions to the calendar inclusion requirement, such as having a 60-day comment period. *See,* N.J.A.C. 1:30-3.3. Agencies can amend their rulemaking calendars by submitting an amended calendar to the OAL for publication in the *New Jersey Register.* However, if the amendment involves the addition of any rulemaking activity to the agency's calendar, changes the anticipated month of proposal publication to an earlier month, or alters the objective, purpose or subject matter of the rulemaking, an agency shall take no action on that amended rulemaking activity until at least 45 days following the publication of the amended calendar. *See,* N.J.A.C. 1:30-3.2. Since enactment of this calendar requirement, State agencies have opted to utilize a 60-day comment period for almost all proposals, so as to except the proposals from the calendar requirement.

The submission of the rule proposal to the Office of Administrative Law is prepared in the form illustrated by Samples A and B. The notice of proposal must include the name of the agency

and the name of the agency head who, by statute, is authorized to promulgate rules. The proposal notice must be signed either by the agency head or by an agency employee authorized by the agency head to prepare rules. *See*, N.J.A.C. 1:30-2.4(b). A citation to the specific legal authority authorizing the proposed rulemaking action must accompany the proposal, as well as a reference (by New Jersey Register issue date and page citation) to the current rulemaking calendar correctly listing the proposal. If the proposal is published by virtue of a rulemaking calendar exception, an explanation of that exception in the proposal Summary is referenced.

The notice must include: a) a summary statement of the proposed rule which explains clearly and concisely the purpose and/or effect of the rule's subject matter; b) a statement of social impact which discusses whether any particular segment of the public will be affected and/or regulated; c) a statement of economic impact which specifies the anticipated costs, revenues or other economic impact upon the segment of the affected public, and/or the adopting agency; d) a federal standards statement or analysis which addresses whether the rules in the notice exceed standards or requirements imposed by federal law; e) a jobs impact statement assessing the number of jobs to be generated or lost if the proposed rule takes effect; f) an agriculture industry impact statement setting forth the nature and extent of the impact of the proposed rule on the agriculture industry; g) a regulatory flexibility statement or analysis concerning the proposed rule's imposition of reporting, recordkeeping and other compliance requirements upon small businesses; h) a smart growth impact statement relating the impact the proposed rule will have on the achievement of smart growth and the implementation of the State of Development and Redevelopment Plan; i) a housing affordability impact statement containing a description of the types and an estimate of the number of housing units to which the proposed rule would apply, and the estimated increase or decrease in the average cost of housing which will be affected by the rule; and j) a smart growth development impact statement containing a description of the types and an estimate of the number of housing units to which the proposed rule would apply, the estimated increase or decrease in the availability of affordable housing which will be affected by the rule, and whether the proposed rule will affect in any manner new construction within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

The summary and accompanying statements, required by N.J.S.A. 52:14B-4(a)(2), Executive Order #4 (2002) and N.J.A.C. 1:30-5.1(c), are not considered part of the substantive text of the rule. As intrinsic parts of the rulemaking process, however, these statements may be used in interpreting the rule. The analysis concerning existing federal standards was initially required by Executive Order #27 (1994); these requirements were adopted in statutory form in 1995. P.L. 1995, c.#65; N.J.S.A. 52:14B-22 through -24. The requirement of a jobs impact statement was also mandated in 1995. P.L. 1995, c. 166; N.J.S.A. 52:14B-4. The requirement of an agriculture industry impact statement was added in 1998. P.L. 1998, c. 48; N.J.S.A. 52:14B-4(a)(2). The regulatory flexibility analysis was mandated by the *Regulatory Flexibility Act,* P.L. 1986, c. 169 (N.J.S.A. 52:14B-16 through 21). If a proposed rule does not impose any requirements on small businesses, the proposal must include a regulatory flexibility statement to the effect that an analysis is inapplicable. The requirements of a regulatory flexibility analysis are explained in N.J.A.C. 1:30-3.1(f)4. The smart growth impact statement was required by Executive Order #4 (2002). The

requirements for the housing affordability impact statement and the smart growth development impact statement were established under P.L. 2088, c. 46, §31, codified as N.J.S.A. 52:14B-4.1b.

Pursuant to P.L. 2004, c. 89, § 3 (N.J.S.A. 52:27D-10.4), effective July 9, 2004, prior to submission of a notice of proposal to the OAL, State agencies must submit the notice to the Smart Growth Ombudsman, in the Department of Community Affairs. The Smart Growth Ombudsman is to review the notice to determine if what is proposed in the smart growth areas (*see*, N.J.S.A. 52:27D-10.5) is consistent with the State Development and Redevelopment Plan. Once the determination of consistency is made, the notice may be submitted to the OAL; generally, a copy of the Smart Growth Ombudsman's letter of determination accompanies the notice submission. The Smart Growth Ombudsman has interpreted this review requirement to not apply to notices of proposed readoption without amendment (*see*, Section F, infra) and notices of proposal from an entity that is "in but not of" a principal department of the Executive Branch of State government.

SAMPLE A
NOTICE OF PROPOSED NEW RULE

OTHER AGENCIES
CASINO REINVESTMENT DEVELOPMENT AUTHORITY
Procedures to Resolve Protested Solicitations and Awards
Proposed New Rule: N.J.A.C. 19:65-11.1

Authorized By: Casino Reinvestment Development Authority, Thomas D. Carver, Esquire, Executive Director.
Authority: N.J.S.A. 5:12-144.1j and 5:12-161f.
Calendar Reference: See Summary below for explanation of exception to rulemaking calendar requirements.
Proposal Number: PRN 2009-326.

Submit comments by January 1, 2010 to:
Paul G. Weiss, Esq., Chief Legal Officer
Casino Reinvestment Development Authority
1014 Atlantic Avenue
Atlantic City, New Jersey 08401
Fax: 609-348-3121
Email: pweiss@njcrda.com

The agency proposal follows:

Summary

The Casino Reinvestment Development Authority (the "Authority"), in accordance with its general rulemaking authority under N.J.S.A. 5:12-161f, proposes a new rule regarding procurement of public contracts. The new rule, N.J.A.C. 19:65-11.1, informs the public of the Authority's formal protest procedures for challenges to quote solicitations, bid specifications, requirements of request for proposals and award of contracts.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule establishes the regulatory framework for the public to protest solicitation and contract awards undertaken by the Authority. The new rule, as proposed, conforms to and supports the concept of public bidding, which requires the authority to conduct competitive bidding wherever possible and to award contracts that are beneficial to the Authority. In the process, the Authority guards against favoritism, improvidence, extravagance and corruption while treating all vendors equally and fairly.

Economic Impact

The proposed new rule will continue the ongoing efforts to ensure that the Authority and the public benefit from the cost and performance advantages achieved by competitive bidding in the daily operation of the Authority.

Federal Standards Statement

No Federal standards analysis is required because the new rule is not being proposed under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to a Federal law, standard or requirement. Rather, the new rule proposed is authorized by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

Jobs Impact

The Authority anticipates only favorable impact on the workforce in the State by this new rule as proposed. The Authority shall continue to provide opportunities to vendors to compete for goods and services contracts as necessary to meet the needs of the Authority, and such contracts will enable businesses to employ New Jersey citizens to perform the contract requirements.

Agriculture Industry Impact

No impact on the agriculture industry is anticipated as a result of the proposed new rule.

Regulatory Flexibility Analysis

The new rule proposed affects all persons and entities that seek the award of goods and services contracts with the Authority. Many such bidders are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. No reporting or recordkeeping requirements are imposed on small businesses by this rule. The compliance requirements imposed are minimal. Protests of solicitation or awards of a contract must be submitted in writing within the rule's specified timeframes, and comply with the rule's content requirements. The costs involved with a protest would be administrative in nature, arising in the preparation and submission of the protest. No professional services are required in order to comply with the rule. As the Authority considers the minimal requirements imposed necessary for a fair protest procedure, no lesser requirements are provided for small businesses.

Smart Growth Impact

The new rule proposed will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rule would be extremely unlikely to evoke a change in the average costs associated with housing. The proposed new rule establishes requirements for the submission and review of protests of the solicitation or award of a contract by the Authority.

Smart Growth Development Impact

The proposed new rule would be extremely unlikely to evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed new rule establishes requirements for the submission and review of protests of the solicitation or award of a contract by the Authority.

Full text of the proposed new rule follows:

SUBCHAPTER 11. PROCEDURES TO RESOLVE PROTESTED SOLICITATIONS AND AWARDS

19:65-11.1 Protested solicitations and awards

(a) Any actual or prospective bidder, offeror, proposer or contractor who is aggrieved in connection with the solicitation or award of a contract must protest to the Authority. The protest shall be submitted in writing to the attention of the Executive Director. A protest objecting to a requirement of a quote solicitation on the Authority's website, a bid document or a request for proposal (RFP) document must be received by the Authority at least three business days prior to either: the scheduled review of quotes, the opening of bids or the last day of receipt of responses to the RFP. A protest of the rejection of a quote or bid, or the award a contract as the result of a quote, bid or RFP process must be received within five days of the award of the contract. Failure to file a timely protest shall bar any further action. The written protest shall identify the specific solicitation or award to which it is addressed, shall set forth in detail the facts and arguments upon which the protesting party bases its protest and shall present any documents which the protesting party deems relevant to the issue(s) presented in the protest.

(b) Upon receipt of a timely filed protest, the Executive Director or his or her designee shall review the protest and any documents filed in support of the protest. The Authority shall advise the protesting party and any other affected party, in a writing which shall be mailed or furnished promptly, of the procedures which will be utilized to review and adjudicate the protest. Where the Authority concludes that additional facts are needed to render a determination, such information may be requested in writing or the Authority may conduct a hearing.

(c) If the protest is not resolved by mutual agreement, the Executive Director shall promptly issue a decision in writing. The decision shall state the determination made and reasons for the action taken. The decision shall be mailed or furnished promptly to the protesting party and any other interested party. Unless any person adversely affected by the decision commences an action in court, the Executive Director's decision shall be final and conclusive. Notwithstanding the above, the Members of the Board of the Authority shall have ultimate authority to approve all contract awards, except where such authority has been delegated to the Executive Director.

(d) If a timely protest is filed, the Authority shall not proceed further with the solicitation or award of the contract until the Executive Director has rendered a decision on the protest, except where the Executive Director makes a written determination that the continued solicitation or award of the contract without delay is necessary to protect the interest of the Authority or the public.

SAMPLE B
NOTICE OF PROPOSED AMENDMENT

TREASURY-TAXATION
DIVISION OF TAXATION
Unclaimed Property
Dormancy Fees on Money Orders
Proposed Amendment: N.J.A.C. 18:13-3.2

Authorized By: Cheryl Fulmer, Acting Director, Division of Taxation.
Authority: N.J.S.A. 46:30B-107.
Calendar Reference: See Summary below for explanation of exception to calendar requirement.
Proposal Number: PRN 2010-002.

Submit written comments by March 5, 2010 to:
Mitchell Smith
Administrative Practice Officer
Division of Taxation
P.O. Box 269
50 Barrack Street
Trenton, NJ 08695-0269

The agency proposal follows:

Summary

The amendment to the rule in this chapter is proposed by the New Jersey Division of Taxation to conform with P.L. 2007, c. 326, §1 (N.J.S.A. 56:8-182) effective April 12, 2008. This statute permits a money order issuer to charge a dormancy fee against a money order of not more than $2.00 per month. However, no dormancy fee may be charged against a money order within the 12 months immediately following the date of sale. As the statute only applies to money orders issued on or after April 12, 2008, money orders issued prior to that date may not have imposed upon them any dormancy fees in excess of $.25 per month, the monthly fee permitted under the original rule. Finally, the amendment requires the issuer of the money order to provide to the purchaser by written notice, the fees and terms of the order, as well as a telephone number that the consumer may call for information concerning any dormancy fee.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment will lessen the value of money orders issued on or after April 12, 2008, not redeemed by consumers and holders of the orders within one year of issuance. Accordingly, the amendment may be detrimental to those persons. However, the amendment is mandated by statutory law, N.J.S.A. 56:8-182.

Economic Impact

As noted above, the proposed amendment will lessen the value of money orders issued on or after April 12, 2008. It may result in consumers expending additional amounts of money to pay for consumer debts and obligations. It may also result in holders not receiving full compensation for the money orders issued to them, as fully discussed in the Summary above.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the proposed amendment. The amendment pertains solely to New Jersey law and policy.

Jobs Impact

The proposed amendment is not expected to have any effect upon the process of job creation in the State. The Division does not anticipate that jobs will be lost or generated in New Jersey as a result of the adoption of the proposed amendment.

Agriculture Industry Impact

The proposed amendment will have no impact on the agriculture industry, other than the general impact felt by all industry groups and by the general public.

Regulatory Flexibility Analysis

The Division of Taxation, consistent with its mission, reviews its rule proposals with a view to minimizing the impact of its rules on small businesses to the extent possible. The mission of the Division of Taxation is to administer the State's tax laws uniformly, equitably and efficiently to maximize State revenues to support public services, and to ensure that voluntary compliance within the taxing statutes is achieved without being an impediment to economic growth.

The proposed amendment, as discussed in the Summary above, would apply to any business that issues money orders and any business, including those that may be considered a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that receives money orders as payment for a consumer obligation. Compliance costs are discussed in the Summary and Economic Impact statements above. The Division has reviewed the application of the Regulatory Flexibility Act to the proposed amendment and because the amendment must be applied uniformly and equitably as required by the underlying statute, the Division is not able to develop and apply special rules for small businesses that would be different from the rules applied to other parties. In this respect, the Division strives to maintain a "level playing field."

The amendment proposed for adoption applies to small businesses, as well as to businesses employing more than 100 people full-time. The reporting, recordkeeping and other compliance requirements in the law must be applied uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with the underlying statute.

The Division anticipates that the amendment will not increase capital costs of small businesses or their need for certain professional services. No exemptions from, or differentiation in, the allowance of dormancy fees on money orders as it may affect large or small businesses was provided, since to do so would not have been in compliance with the underlying statute.

Smart Growth Impact

The Division of Taxation anticipates that the proposed amendment will have no impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendment would not result in a change in the average costs associated with housing. The regulation would have no impact on any aspect of housing because the amendment only involves the allowance of dormancy fees on money orders purchased by consumers.

Smart Growth Development Impact

The proposed amendment would not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the regulation has nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey, but only involves the allowance of dormancy fees on money orders purchased by consumers.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

18:13-3.2 Dormancy fees; unconscionability; limitations

(a) (No change.)

(b) In addition to the requirements of (a) above, dormancy fees may not be unconscionable. Dormancy fees are not unconscionable **when** applied where:

1. Holders of money orders pursuant to N.J.S.A. 46:30B-13:

i. (No change.)

ii. Clearly disclose the fees **and terms** to the purchaser of the money order at the time of the purchase and to the recipient of the money order[;] **by:**

(1) Written notice of the dormancy fees on the money order or the sales receipt for the money order; and

(2) Written notice on the money order, or the sales receipt for the money order, of a telephone number that the consumer may call for information concerning any dormancy fees;

iii. Do not accrue the fees until at least [three] **one** year[s] after the purchase date**, no fees may be imposed retroactively to the date of purchase,** and the fees stop accruing after the value of the money order is escheated;

iv. (No change.)

v. Do not impose fees that exceed the sum of $.25 per month per money order or the aggregate amount of $21.00 per money order; **however, for money orders issued on or after April 12, 2008, an issuer may impose fees not to exceed the sum of $2.00 per month per money order or the aggregate amount of $144.00 per money order;**

2.-5. (No change.)

Pursuant to N.J.S.A. 52:14B-4, the agency's notice of proposal must provide the public with at least thirty days in which to be heard and comment on the proposed rule. The agency may provide a comment period of greater than thirty days. If within thirty days of the publication of a notice of proposal sufficient public interest is demonstrated in an extension of time for submission of comments, the agency shall provide an additional thirty-day period for the receipt of comments. The agency shall not adopt the proposed rule until after the end of that thirty-day extension. "Sufficient public interest" for granting an extension of the comment period shall be determined by the proposing agency based upon definite standards it has adopted as part of its rules of practice required under N.J.S.A. 52:14B-3(2). If the notice of proposal already provided for a comment period of sixty days or more, no extension of the comment period upon a demonstration of sufficient public interest is required.

The announcement of the public's opportunity to be heard must state when, where and how persons may present their views, either orally or in writing, and, if a public hearing is to be held, the time and place of such hearing. The agency must provide additional notice of a proposed rulemaking besides the proposal in the *New Jersey Register*. *See*, N.J.S.A. 52:14B-4(a)(1) and N.J.A.C. 1:30-5.2(a)3 to 6. Upon receipt of a notice of proposal, OAL delivers a copy of the notice to the Legislature, commencing that body's sixty-day comment period. (*See*, Section G, infra).

The notice of proposal must also contain the text of the proposed rulemaking action and comply with the standard of clarity set forth at N.J.S.A. 52:14B-4.1a(b). The text of the rule must be coherent, understandable, detailed, and specific enough to identify who or what will be affected; how or when the effect will occur; what is being prescribed or mandated; and what, if any, enforcement mechanisms and/or sanctions may be involved. The text of any existing rule that is being amended must specifically indicate what provisions are being added or deleted and must identify any rule being repealed or renumbered.

The notice shall: a) be drafted to provide adequate notice to affected persons and interested persons with some subject matter expertise; b) conform to commonly accepted principles of grammar; c) contain sentences that are as short as practicable, and be organized in a sensible manner; d) not contain double negatives, confusing cross-references, convoluted phrasing or unreasonably complex language; e) define terms of art and words with multiple meanings that may be misinterpreted; and f) be sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, readoption *(See,* Section F, infra) or amendment of the rule.

The text of the rule must contain either the current *Code* (N.J.A.C.) citation or a proposed citation. The citation N.J.A.C. 1:30-2.2(a)8 represents the following information: Title 1, Chapter 30, subchapter 2, section 2, subsection (a), paragraph 8.

Pursuant to the N.J.S.A. 52:14B-7(c), the Director of the Office of Administrative Law may decide not to publish the full text of any proposed rule in the *New Jersey Register* which he or she deems unduly cumbersome or otherwise inexpedient. In such a case, the proposed text of the rule

may be summarized in the *Register* with a notice that a copy of the rule is available upon request from the agency.

Pursuant to N.J.S.A. 52:14B-4(a)(3), the agency must conduct a public hearing on the proposed rule if such hearing has been requested by a committee of the Legislature or another governmental agency or subdivision, or if sufficient public interest is shown, provided the request for a public hearing is made to the agency within thirty days after the proposed rule is published in the *New Jersey Register.* "Sufficient public interest" for conducting a public hearing shall be determined by the proposing agency based upon definite standards it has adopted as part of its rules of practice required under N.J.S.A. 52:14B-3(2).

Whether the hearing was generated by legislative or executive branch request, or whether the agency has decided on its own to hold a public hearing, the agency must provide at least fifteen days notice of the hearing. Announcement of a public hearing subsequent to publication of a proposal may be disseminated as a public notice published in the *New Jersey Register* or in any other manner which is reasonably assured to reach the interested public.

When the proposed rule appears in the *New Jersey Register*, the public is invited to provide the proposing agency with any data, views or arguments relevant to the proposed rule which the interested party wishes the agency to consider prior to adopting the rule as proposed. Once the public comment period for the proposal has expired and all public hearings, if any, have been completed, and the sixty-day period for Legislative comment has expired (*see*, Section G, infra), the proposing agency may proceed to adopt the proposed rule. A proposal remains in effect for a period of one year from the date of publication in the *New Jersey Register.* If the rule is not adopted and a notice of adoption filed with the OAL within the one-year period, the proposal expires. If the agency seeks to pursue rulemaking activity on this subject, it must republish the proposed rule and comply anew with the notice and opportunity to be heard requirements of the Administrative Procedure Act.

2. Adopted Rules

The adoption of a rule is the final agency action on the proposed rule whereby the rule is officially approved and authorized for promulgation by the agency. To "promulgate" means to proclaim officially in the *New Jersey Register* and thereby render effective a new rule, amendment or repeal which was duly adopted by an agency and filed with the Office of Administrative Law. The promulgation date of a rule is its effective date, which is the date the notice of adoption is published in the *New Jersey Register.*

A proposed rule cannot be adopted by an agency and shall not be filed with the Office of Administrative Law until after the end of the public comment period and sixty-day Legislative comment period provided by the Administrative Procedure Act.

As with the proposal, the submission of the adopted rule to the Office of Administrative Law is prepared in a prescribed form, as illustrated in Sample C. The notice of adoption includes

the name of the agency, the name of the agency head who adopted the rule, and the date of adoption. The notice also states the date and the citation in the *New Jersey Register* where the rule appeared as a proposal. In addition, the notice also indicates the date the adoption was filed with the Office of Administrative Law and the official document number assigned to it. The effective date of the adoption is also specified in the notice. An operative date for the rule is also included if the agency wishes to postpone enforcement of the rule until a date later than the date of promulgation.

Pursuant to Executive Order #66 (1978) and N.J.S.A. 52:14B-5.1, which required the automatic expiration of agency rules within five years of their effective date (unless readopted in conformance with the normal rulemaking process), the notice also states the date upon which the rule will expire. The expiration date is either determined by the effective date of the chapter currently being adopted or has already been determined by a previous adoption or readoption of the chapter affected by the rulemaking. (*See*, Section F, *infra*).

As part of the adoption notice, the agency must submit a summary of the public comments received and summarize the agency's responses to those comments. Under the existing rules, it is unnecessary for agencies to reply individually to each comment received. The required summary of public comments received should describe the issues, questions and points of controversy raised during the public comment period. The agency must state the reasons for accepting or rejecting the public comments which were submitted. Any changes between the proposed rule and the adopted rule and the reasons for the changes must also be summarized. The notice of adoption must also contain, as appropriate, a federal standards statement or analysis (*see,* Section E-1, *infra*).

In those situations in which the agency's contemplated changes to the proposed rule are so substantial that they effectively destroy the value of the original notice, the agency must re-propose the rule. This provides the public with a new notice and opportunity to be heard. Changes which: a) enlarge or curtail who or what will be affected; b) change what is being prescribed or proscribed or mandated; or c) enlarge or curtail the scope of the proposed rule and the burden it imposes on those affected, are considered substantial consideration of the extent of such effects determines whether substantial changes require re-proposal. Changes between the rule as proposed and as adopted which are minor substantive alterations, and any spelling, grammatical or language changes to clarify the proposal are not considered substantial changes. These changes will not preclude the adopted rule from being accepted by the OAL for filing. N.J.A.C. 1:30-6.3.

SAMPLE C
NOTICE OF ADOPTION

HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
Pharmaceutical Services
Prescriptions Received by Non-Beneficiaries

Adopted Amendment: N.J.A.C. 10:51-1.4

Proposed: January 4, 1999 at 31 N.J.R. 19(a).
Adopted: July 14, 1999 by Michele K. Guhl, Commissioner, Department of Human Services.
Filed: July 16, 1999 as R.1999, d.264, **without change.**
Authority: N.J.S.A. 30:4D-6, 7 and 12.
Agency Control Number: 98-A-26.
Effective Date: August 16, 1999.
Expiration Date: August 28, 2003.

Summary of Public Comments and Agency Responses:

There were two comments received from:

1. New Jersey Association of Health Care Facilities, William R. Abrams, President, and
2. Garden State Pharmacy Owners, Inc., Stephen Brandt, R.Ph., Executive Director.

COMMENT: Mr. Abrams, of the New Jersey Association of Health Care Facilities (NJAHCF), said it is clear that the proposed amendment to N.J.A.C. 10:51- 1.14 does not apply to providers of pharmaceutical services in nursing facilities, but it is not clear whether this proposed amendment would apply to pharmaceutical services in assisted living residences (ALRs), comprehensive personal care homes (CPCHs) or residential health care facilities (RHCFs). He asks that proposed N.J.A.C. 10:51-1.14(b)2 be amended to state that the subsection shall not apply to pharmaceutical services in ALRs, CPCHs or RHCFs, as well as not applying to prescription deliveries.

RESPONSE: The proposed amendment only applies to non-beneficiaries picking up prescriptions for New Jersey Medicaid fee-for-service, NJ KidCare fee-for-service, or General Assistance (GA) beneficiaries from retail pharmacies. Prescriptions delivered to beneficiaries residing in nursing facilities (NFs), assisted living residences (ALRs), comprehensive personal care homes (CPCHs), residential health care facilities (RHCFs) or their own homes are not covered by the proposal. Therefore, the amendment to N.J.A.C. 10:51-1.14(b)2 is not necessary.

COMMENT: Mr. Brandt, of the Garden State Pharmacy Owners, Inc., asked who would be subject to the liability when the pick up is disallowed because the sick patient sent a minor for the pick up without the appropriate documentation. If the patient then suffers a medical problem because he or she did not receive the necessary medication, Mr. Brandt raised the question of who assumes the liability in such cases and suggested that the proposal be further fine-tuned to address these kinds of emergency situations.

RESPONSE: In response to Mr. Brandt's concern about liability when the pick up is disallowed, the Division notes that the rule does not indicate that a pharmacist may not dispense the medication; the rule indicates that if the pharmacist dispenses the medication disregarding these requirements, the pharmacist cannot bill the Medicaid, NJ KidCare or General Assistance (GA) programs for these services. The rule allows the pharmacist several alternatives, including dispensing and not billing the Division. Alternatively, the pharmacist may deliver the medication or, if the pharmacy does not deliver, transfer the prescription to a pharmacy which does deliver. The pharmacist can advise the third party picking up the medication that the Division will not pay without appropriate identification, and if the individual picking up the prescription is willing to pay the purchase price, the pharmacist can accept payment from the third party for the prescription. The pharmacist can also issue an emergency supply and request the identification for the rest of the supply. In this instance, however, the pharmacist may not bill the Medicaid, NJ KidCare or GA programs until the entire supply is dispensed. Based on these alternatives, the Division does not believe the proposal requires additional amendments and is proceeding to adopt the amendment as proposed.

Federal Standards Statement

The adopted Medicaid changes do not include changes which exceed current Federal law or regulation. The New Jersey Medicaid program (Title XIX) allows prescribed drugs to be a covered service (42 C.F.R. §440.120). Payment for drugs is subject to upper payment limits (42 C.F.R. §447.334).

Federal statute at 1902(a)30 (42 U.S.C. §1396a(a)30) and Federal regulations at 42 C.F.R. 456, subpart A, require a state's Title XIX (Medicaid) program to have a plan of effective utilization control program. The Federal regulations and statute anticipate that the State will promulgate appropriate statute and regulations to assure that there is an effective plan.

Sections 2103 and 2110 of the Social Security Act (42 U.S.C. §1397cc and 1397jj respectively) allow a state to provide coverage of prescription drugs for its state-operated children's health insurance program for targeted, low- income children, known in New Jersey as NJ KidCare. Section 2101 of the Act (42 U.S.C. §1397aa) provides funds to a state to administer the program in an effective and efficient manner.

In addition, Section 2105 of the Act (42 U.S.C. §1397ee) specifies requirements regarding the eligibility of certain children for NJ KidCare, including the availability of other health insurance coverage as a condition of eligibility and intends that a state establish policies to address the "crowd- out" issue, and that the policies established in the rule related to NJ KidCare fall within Federal guidelines.

Full text of the adoption follows:

10:51-1.4 Program restrictions affecting payment for prescribed drugs

(a) (No change.)

(b) If a prescription is not dispensed directly to the New Jersey Medicaid fee-for-service, NJ KidCare fee-for-service, or General Assistance (GA) beneficiary for whom the prescription was written, and the claim charge exceeds $150.00, the individual picking up the prescription shall present the Medicaid Identification Card, the NJ KidCare Identification Card or the authorized documentation confirming GA eligibility of the beneficiary. Without the required proof of identity, the prescription shall only be dispensed in accordance with (b)1 and 2 below:

1. If the individual picking up the prescription cannot produce the beneficiary's eligibility documentation, then the non-beneficiary shall produce a valid driver's license as identification. Pharmacies shall record and maintain on file the driver's license number of the non-beneficiary picking up the prescription on the pharmacy signature log or a photocopy of the driver's license presented by the non-beneficiary. Payments for Medicaid fee-for-service or NJ KidCare fee-for-service covered pharmacy services not dispensed directly to the beneficiary for whom there is no documentation or a photocopy of the driver's license of the non-beneficiary picking up the prescription shall be subject to full recovery by the State.

2. This subsection shall not apply to prescription deliveries.

3. Such documentation shall be retained by the pharmacy for at least five years from the date the prescription was dispensed, and shall be available for review by the Division or its authorized representatives upon request.

Each adoption notice prepared by the agency must specifically indicate changes to the rule text between proposal and adoption. The published notice of adoption will include the complete proposed rule text, as adopted. Along with the notice of adopted rule as described above, a Certificate of Proposal, Adoption and Promulgation, furnished by the OAL, must also be submitted to the OAL upon filing the adopted rule. The Certificate is the formal document which describes and certifies the regulatory history of the proposal and adoption and is part of the formal record of the rulemaking proceeding. The Certificate must be signed by the adopting agency head, who certifies that the rule was duly adopted in compliance with the Administrative Procedure Act and the OAL Rules for Agency Rulemaking. Once the notice of adoption has been reviewed and accepted by the OAL, it is prepared for final publication in the *New Jersey Register*. A Certificate of Proposal, Adoption and Promulgation is shown in Sample D.

F. EXECUTIVE ORDER #66/N.J.S.A. 52:14B-5.1 - SUNSET OF RULES

Executive Order #66 (1978) provides that all rules adopted after May 15, 1978 shall include an expiration date (sunset date) which is no later than five years from the effective date of the rule. N.J.A.C. 1:30-4.4(a). This Executive Order was issued to discourage excessive agency rulemaking and to require a relative rulemaking review to eliminate unnecessary, redundant, confusing or unreasonable rules. Thus, each chapter adopted after the effective date of the Executive Order is assigned a sunset date. Amendments after May 15, 1978 which are made to a chapter which was adopted before May 15, 1978 must likewise contain a sunset date.

N.J.S.A. 52:14B-5.1a (P.L. 2001, c. 5, §10a), effective July 1, 2001, provides that every rule in effect as of January 16, 2001 (the enactment date of P.L. 2001, c. 5) shall expire five years after the act's effective date (that is, July 1, 2006) unless a sooner expiration date was established for the rule. Thus, those rules predating Executive Order #66 (1978) still without expiration dates were given a five-year duration. N.J.S.A. 52:14B-5.1b provides that every rule adopted on or after July 1, 2001 shall expire five years after the effective date of the rule unless a sooner expiration date has been established, thus recognizing and continuing the expiration dates established under Executive Order #66. Pursuant to N.J.S.A. 52:14B-5.1d, the Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor. N.J.S.A. 52:14B-5.1e provides that N.J.S.A. 52:14B-5.1 does not apply to: a) any rule repealing a rule; b) any rule prescribed by federal law; or c) any rule whose expiration would violate any other federal or State law; in the latter two circumstances, the law upon which the exception is based is to be cited in the notice of adoption.

The expiration date automatically applies to the whole chapter. Once an expiration date is established, it remains in effect irrespective of any subsequent amendments to the chapter, or a subchapter, section or subsection except when a complete repeal or complete repromulgation of the whole chapter occurs. To maintain the effectiveness of a chapter, the chapter must be properly proposed, adopted and filed prior to its expiration date. The process is called readoption. *See*, N.J.A.C. 1:30-6.4. Upon the filing of a notice of proposed readoption with the OAL on or before the chapter expiration date, the chapter expiration date is extended for 180 days, in accordance with N.J.S.A. 52:14B-5.1c.

SAMPLE D
CERTIFICATE OF PROPOSAL, ADOPTION AND PROMULGATION

	OFFICE OF ADMINISTRATIVE LAW CERTIFICATE OF PROPOSAL, ADOPTION AND PROMULGATION	TO: George W. Hayman Corrections

I. PROPOSED RULE (Completed by OAL)	(a) Proposal Number: PRN 2009-375	(b) Subject of Proposal **Definitions; Admission to Protective Custody; Hearing Procedure for Placement in Protective Custody,...**

(c) Proposing Agency	(d) Legislative Receipt	(e) Calendar Reference	(f) Proposal Notice Citation
THE COMMISSIONER	**11/12/2009**	**Exception**	**41 N.J.R. 4663(a)**

(g) Type of Rule	(h) Code Citation N.J.A.C.	(j) This is to certify that the notice of proposed rule was filed and published in the New Jersey Register pursuant to N.J.S.A. 52:14B-3(4) and 4(a)(1).
1. ☐ New Rule 2. ☒ Amendment 3. ☒ Repeal 4. ☐ Readoption 5. ☐ Concurrent Proposal	**10A:1-2.2 and 10A:5-5.1 thru 5.5, 5.13 and 5.22; 10A:5-5.20**	*Mark J. Stanton* — Manager, Div. of Admin. Rules **12/21/2009** — Date
	(i) Publication Date **12/21/2009**	

II. RULEMAKING RECORD AND ADOPTION OF PROPOSED RULE (To be completed by proposing Agency)

(a) Public Notice for Proposal	(b) Public Comment Permitted	(c) Special procedure initiated pursuant to the APA or otherwise required by law
1. ☒ New Jersey Register 2. ☒ State House News Media 3. ☒ Agency Website 4. ☒ Other Secondary Notice (Specify) **Mailed written notice and electronic notice**	1. ☒ Written Statement 2. ☐ Phone Conversation 3. ☐ Public Hearing 4. ☐ Personal Interview 5. ☐ Conference 6. ☐ Other (Specify)	1. ☐ Pre-Proposal for a Rule 2. ☐ Petition for a Rule 3. ☐ Public Hearing ☐ i. Pursuant to N.J.S.A. 52:14B-4(a)(3) ☐ ii. Mandatory ☐ iii. Discretionary 4. ☐ Submission to Advisory Board ☐ i. Mandated by: 5. ☐ Special Notice ☐ i. Mandated by: 6. Other (Specify) ☐ i. Mandated by:

(d) Public Hearing (where applicable)
1. Date(s)
2. Place(s)
3. No. persons testified

(e) Record of Public Comment	(f) Variance between Proposal and Adoption	(g) Operative Date
1. ☐ File of Written Statement 2. ☐ Transcript of Public Hearing 3. ☐ Public Hearing Officer's Report 4. ☐ List of Individuals or Associations 5. ☐ Minutes of Conference of Other Meeting 6. ☐ Number of Persons who Commented 7. ☒ No Comments Received Include List of Commenters and Summary of Public Comments Received and Agency Responses in Adoption Notice	1. ☒ No Change 2. ☐ With Changes Not in Violation of N.J.A.C. 1:30-6.3 Include Explanation of, and Reasons for, Changes in Adoption Notice	1. ☒ Upon Promulgation (Date of Publication) 2. ☐ After Promulgation (specify cite(s) and date(s)) 3. ☐ Upon Filing (for Emergency and Readopted rules, if filed timely)
	(i) Type of Adoption 1. ☒ Ordinary Rule 2. ☐ Emergency Rule 3. ☐ Special Rule 4. ☐ Organizational Rule 5. ☐ Federally Required Rule 6. ☐ N.J.S.A. 52:14B-5.1a/E.O. 66 Readoption 7. ☐ Readoption of Emergency Rule Attach Statement of Imminent Peril and Expiration Date for any Emergency Rule	
(h) Expiration Date 1. ☒ **6/17/2013; 3/25/2013** ☐ i. Established by this Rule ☒ ii. Already Established as Part of N.J.A.C. **10A:1 and 10A:5** 2. ☐ Exempt, under		(j) OAL Log R. **2010** d. **054** Date Received: **3/11/2010** Date Filed: **3/11/2010**

(k) Adoption. Pursuant to the authority of N.J.S.A. **30:1B-6 and 30:1B-10** and in accordance with the New Jersey APA and any applicable provisions of State or Federal statutes or regulations, the (Agency) **New Jersey Department of Corrections** hereby adopts this proposal and certifies that the rulemaking record contained in and attached to this Certificate complies with N.J.A.C. 1:30-5.6.

ORDERED this **5th** day of **March**, 2010

Gary M. Lanigan
Acting Commissioner
Signature and Title of Adopting Officer

III. PROMULGATION (Completed by OAL)

(a) Code Citation: N.J.A.C. **10A:1-2.2, 10A:5-5.1 thru 5.5, . . .**	(b) Document Number: R. **2010** d. **054**
(c) Adoption Notice Citation **42** N.J.R. **721(a)**	(d) Publication Date **4/5/2010**

(e) This is to certify that the adopted rule was filed and promulgated pursuant to N.J.S.A. 52:14B-1 et seq.

Mark J. Stanton
Manager, Div. of Administrative Rules

4/6/2010
Date

Form OAL APF-09-1E

G. EXECUTIVE ORDERS #1, 2 AND 3 (2010)

On January 20, 2010, Governor Chris Christie issued Executive Orders #1, 2 and 3. Executive Order #1 froze and suspended for 90 days (through April 20, 2010) all proposed rules, except those proposals set forth in Appendix B of the Order; Appendix A of the Order listed the published proposals affected by the freeze. The purpose of the freeze was to afford the Red Tape Review Group, established under Executive Order #3 and headed by the Lieutenant Governor, "a sufficient opportunity to examine proposed administrative rules and regulations prior to their adoption, and thereafter make recommendations on those contemplated rules that are unworkable, overly-proscriptive or ill-advised." Executive Order #1, fourth paragraph. The Red Tape Review Group was directed to provide a written report to the Governor, within 90 days, "making detailed recommendations to rescind, repeal or amend any provisions that unduly burden business and workers." Executive Order #3, paragraph 2. Executive Order #2 established "Common Sense Principles" for State rules and regulations "that will give this State the opportunity to energize and encourage a competitive economy to benefit businesses and ordinary citizens." Executive Order #2, sixth paragraph. Executive Order #2 established a number of principles for immediate, intermediate and long-term relief from regulatory burdens, such as engaging in "advance notice of rules" by soliciting the advice and views of knowledgeable persons outside of State government, and redrafting rules that impede economic development due to insufficient or contradictory guidance or exceeding legislative intent or federal standards without well-documented cause. The text of these Executive Orders may be found at http://nj.gov/infobank/circular/eoindex.htm. These Executive Orders and legislative initiatives contemplated in the 2010-2011 session of the Legislature portend significant changes in the rulemaking process and the nature of rules in New Jersey.

H. LEGISLATIVE OVERSIGHT

In 1981, over the veto of the Governor, the Legislature passed the Legislative Oversight Act. This measure mandated that nearly every rule proposed by any State agency was to be submitted to the Legislature for evaluation. After a period of sixty days, the Legislature could adopt a concurrent resolution which disapproved the rule or prohibited it from taking effect for an additional period of sixty days. The rule would be deemed approved if it was not disapproved within that time.

Upon receipt of a Formal Opinion from the Attorney General that the measure was unconstitutional, the Governor instructed his cabinet officers to ignore it. The Legislature sought a declaratory judgment that the Act was constitutional. The New Jersey Supreme Court in *Byrne v. General Assembly*, 90 N.J. 376 (1982) ruled that the Legislative Oversight Act was unconstitutional, in that it violated the doctrine of separation of powers by awarding to the Legislature excessive powers to obstruct the executive branch in its constitutional mission to execute faithfully the law. In its analysis of the constitutional issues, the Court observed that by giving the Legislature power to control agency rulemaking, the function of State agencies would be severely impeded. Because agencies have the duty to enforce statutes, the Legislative Oversight would frustrate the executive branch's enforcement powers. Moreover, a veto which amended or

repealed existing legislation was unconstitutional in that it furnished the equivalent of the passage of a new law without the Governor's approval. Such an action would be a violation of both the separation of powers doctrine, and the presentment clause of the State constitution. The Court additionally pointed out that opportunities exist for the Legislature to voice its opinion concerning the execution of laws which would leave open the danger of creating laws without the constitutionally required participation of the Governor or which would allow unwarranted interference with the activities of the Executive Branch. The court decision did not squarely address every element of the 1981 Legislative Oversight Act. Thus, the provisions which require that agencies prepare a summary and a description of the expected social and economic impact of proposed rules, that the Legislature receive a copy of all proposals and be offered a sixty-day period in which to comment on the rule, remained intact. Consequently, agencies must allow a thirty-day public comment period and a concurrent sixty-day period for legislative review. Therefore, except for emergencies (*See*, Section H-1, *infra.*), a rulemaking requires a minimum of sixty days to complete.

In 1992, the voters approved a constitutional amendment authorizing the Legislature to review administrative regulations and prevent them from taking effect when they are found to be contrary to the Legislative intent. The Legislature has established procedures to implement this review, including a public hearing and a majority vote of each house in favor of a concurrent resolution invalidating or prohibiting the rule. *See*, N.J. Const. Art. 5, sec. 4, par.6.

I. RULEMAKING PROCEDURES OTHER THAN PROPOSALS AND ADOPTIONS

There are several rulemaking procedures other than the proposal and adoption procedures discussed above. This section discusses these additional procedures and their functions.

1. Emergency Rule

An emergency rule departs from the normal rulemaking requirements of the Administrative Procedure Act in that the thirty-day comment period is suspended and an agency may adopt the rule without prior notice if the agency finds that an imminent peril to the public health, safety or welfare exists which warrants suspension of prior notice. *See*, N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-6.5. An emergency adoption is effective for sixty days from the date of acceptance and filing by the OAL. Publication in the *New Jersey Register* is not necessary to render the emergency provisions effective. N.J.S.A. 52:14B-4(c). If the agency wishes to render the emergency rule effective beyond the sixty-day period, it may concurrently propose the rule at the time the emergency adoption is filed. This procedure is in conformance with the normal rulemaking process, and thereby triggers the "opportunity to be heard" feature of the Administrative Procedure Act. *See,* N.J.A.C. 1:30-6.5(d).

As with the proposal and adoption notices discussed above, an emergency adoption takes the form of a notice and includes the text of the rule. If the notice also includes a concurrent proposal, the comment submission information and eight narrative statements for a proposal must

also be included (*see*, Section E-1, *infra*). In addition, the adopting agency head must also file a statement of Imminent Peril, describing the reasons for finding that there is an imminent peril and that the peril necessitates proceeding on an emergency basis. The statement must specify how the subject matter of the rule will respond to the imminent peril. In addition, the agency must submit a signed statement from the Governor concurring as to the existence of an imminent peril which justifies the emergency rule. The concurrent proposal is excepted from the rulemaking calendar requirements. *See*, N.J.A.C. 1:30-3.3(a)3.

2. Special Adopted Rule

From time to time in enabling legislation, the Legislature has authorized an agency head or promulgating entity to adopt rules to effect the purposes of the legislation, which rules are to be effective, without being proposed, immediately upon filing of the notice of adoption with the OAL. *See*, for example, P.L. 2000, c. 116, §2. The OAL has designated such rulemakings "special adoptions."

In some cases, the special adopted rules continue as an effective part of the chapter(s) of which they are a part without further agency action. In other cases, the enabling legislation establishes a specific duration for the special adopted rules, typically six months or one year, thus requiring them to be proposed and adopted in the normal course of rulemaking for the rules to be permanently effective, subject only to the chapter "sunset" requirements *(see,* Section F, *infra).* Agencies may accomplish this proposal and permanent adoption of the special adopted rules by utilizing a separate notice of proposal to be followed by a notice of adoption, or by concurrently proposing the permanent adoption of the special adopted rules in the notice of special adoption. As with the concurrent proposal of emergency adopted rules *(see,* Section H—1, *infra),* if the notice of adoption for the proposed "special" rules is submitted to the OAL on or before the expiration date of the special adopted rules, the adopted rules are effective upon filing and the rules continue uninterrupted in effect. If the notice of adoption for the proposed "special" rules is submitted to the OAL after the expiration of the special adopted rules, a "gap" in the rules' effectiveness occurs between that expiration date and the effective date of the adopted proposed rules, which is the New Jersey Register publication date of the notice of adoption of the proposal. Any changes upon adoption to the rules are effective upon publication of the notice of adoption.

3. Petition for a Rule

N.J.S.A. 52:14B-4(f) provides that an interested person may petition an agency to promulgate, amend or repeal a rule. When a person petitions an agency to begin a rulemaking proceeding, within fifteen days, the agency must file a notice of receipt of petition with the OAL for publication in the *New Jersey Register.* (*See*, Sample E). The notice must state the date the petition was received by the agency, the name of the petitioner, the substance of the requested rulemaking action, and the problem or purpose which is the subject of the request. Within sixty days of receiving the petition, the agency shall inform the petitioner of its proposed action. The agency shall also file with the Office of Administrative Law a notice of action on petition for publication in the *New Jersey Register.* (*See*, Sample F). The notice must state the name of the petitioner, the substance of the action which the agency will take on the petition, a statement of reasons for the agency action, and a certification by the agency head that the petition was duly considered pursuant to law. The petition process is codified at N.J.A.C. 1:30-4.

The agency's action on a petition from an interested person includes denying the petition or accepting the petition and initiating a rulemaking proceeding within 90 days of granting the petition. The agency may also decide that the subject matter of the petition requires referral for further deliberations before beginning a particular course of action, which deliberations shall conclude within 90 days of referral. Upon conclusion of such further deliberations, the agency shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days. The agency shall inform the petitioner of the results of any such deliberations and those results must be submitted to the OAL for the publication in the *New Jersey Register.*

If the agency fails to act in accordance with the mandatory time frames for action on a petition, the petitioner may request, in writing, a public hearing on the petition by submitting a request to the Director of the OAL. Upon receipt of a request for a hearing, the Director shall order a public hearing on the rulemaking petition. The Director shall provide the agency with a notice of the Director's intent to hold the public hearing if the agency does not. If the agency does not provide notice of a public hearing within 15 days of issuance of the Director's notice, the Director shall schedule a public hearing to be conducted by the OAL. The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition and a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in N.J.A.C. 1:30-5.5(d), except that the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition. The report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rulemaking.

Pursuant to N.J.A.C. 1:30-4.1(b), each agency is required to prescribe by rule the form in which a petition must be submitted and the procedures which a petitioner must follow for submitting a petition to the agency.

4. Pre-Proposal for a Rule

Pursuant to N.J.S.A. 52:14B-4(e), an agency may conduct a preliminary proceeding for the purpose of eliciting ideas, views and comments of interested persons on a contemplated rulemaking proceeding. This preliminary action, prior to the filing of a formal rule proposal, is called a pre-proposal. If an agency wishes to activate the pre-proposal preliminary proceeding, the agency must submit a notice of pre-proposal to the OAL for publication in the *New Jersey Register* and provide at least a thirty-day comment period prior to submitting a formal notice of proposed rule on the same subject. The agency's notice of pre-proposal can take various forms. For instance, the agency can simply state the subject matter of the intended rulemaking proceeding without proposing the text of a rule and request the public's viewpoints on the particular area sought to be regulated and the particular provisions which should be included in a proposed rule. The agency can also publish a proposal notice with the pre-proposed text of a rule, elicit the public's comments and amend the rule if necessary upon submitting the formal rule proposal.

In either of the situations mentioned above, the notice of pre-proposal must include the name of the agency and agency head, a citation to the legal authority authorizing the rulemaking action, a discussion of the subject matter of the rule and/or the problem or purpose the agency wishes to address and, if available, a draft of the contemplated rules, where and when interested persons may submit their comments or attend any hearings or conferences on the contemplated rulemaking action.

The pre-proposal process and requirements are codified at N.J.A.C. 1:30-5.3, 5.4 and 5.6.

Once the agency has conducted and completed the pre-proposal rulemaking activities mentioned above, and has gathered all the relevant comments, views and expertise which it considers necessary to proceed with a proposed rule, any further rulemaking action must also be conducted in compliance with the Administrative Procedure Act.

SAMPLE E
NOTICE OF RECEIPT OF PETITION FOR RULEMAKING

EDUCATION
(a)

THE COMMISSIONER

Notice of Receipt of Petition for Rulemaking

N.J.A.C. 6A:11-7.1, Charter Schools

Petitioners: Board of Education of the Township of Delran, New Jersey and the Board of Education of the Township of Burlington, New Jersey.

Take notice that on May 13, 1999, the New Jersey Department of Education received a petition for rulemaking. The petitioner is the Board of Education of the Township of Delran. On May 24, 1999, the New Jersey Department of Education received a supplementary notice of petition to add a second petitioner, the Township of Burlington, to the May 13, 1999 petition.

The petitioners request that the Department amend N.J.A.C. 6A:11-7.1 to require the Commissioner to prepare the report on the "local levy budget per pupil for the specific grade level" under that section based upon actual charter school enrollments as of February 15, 1999 of the prebudget year. The current rule requires the report to be prepared based upon projected enrollments as of February 15, 1999 of the prebudget year.

The petitioners also request the Department to create a regulation that requires a charter school to have identified the location of its school and that such location shall be approved by the Department of Education no later than February 15 of the prebudget year.

In accordance with applicable law, the Department shall subsequently mail to the petitioners, and file with the Office of Administrative Law, a notice of action on the petition.

SAMPLE F
NOTICE OF ACTION ON PETITION FOR RULEMAKING

LAW AND PUBLIC SAFETY
NEW JERSEY RACING COMMISSION
Notice of Action on Petition for Rulemaking
Starting Gate
N.J.A.C. 13:71-17.1

Petitioner: Allan Schott, Mahwah, New Jersey

Take notice that on June 22, 2009, the New Jersey Racing Commission received a petition for rulemaking from Allan Schott, of Mahwah, New Jersey, seeking a new section to N.J.A.C. 13:71-17.1, Starting gate. The petition seeks to implement a fair start pole situated approximately 200 feet before the start. If a horse has not reached the fair start pole when the horses are released at the starting point by the starter, the judges shall cause the inquiry sign to be displayed immediately and shall request the horse be scratched from the mutuels.

As a result of the receipt of this petition, and pursuant to N.J.A.C. 13:71-17.1, the Racing Commission caused to be filed with the Office of Administrative Law (OAL) a "Notice of Receipt of Petition for Rulemaking," which was published in the August 17, 2009 New Jersey Register at 41 N.J.R. 3116(a).

Take further notice that on August 19, 2009, the Racing Commission duly considered the petition pursuant to law and at such time voted in the affirmative to grant the petition and propose for public comment amendments to the subject rule as requested by Mr. Schott. The Racing Commission took this action pursuant to N.J.A.C. 1:30-4.2(a)2, because the request set forth in the petition would result in significant changes to the existing regulation.

In accordance with the provisions of N.J.A.C. 1:30-4.2, the Executive Director will subsequently mail to the petitioner a notice of action on the petition and initiate a rulemaking proceeding with the Office of Administrative Law within 90 days of granting the petition.

5. Negotiating a Rule

When an agency considering a rulemaking wishes to negotiate the language of the rule with interest groups which are affected by the contemplated rule, the agency may ask the OAL to conduct a process called "negotiating a rule." *See*, N.J.A.C. 1:30-5.7.

This process brings together a team consisting of representatives from the agency considering the rulemaking and from various interest groups with a representative from the OAL. After the team completes the negotiations, the OAL representative presents participants with a final version of a negotiated rule, which the agency may then propose if the agency agrees with the negotiated version.

J. ORGANIZATIONAL RULES

Pursuant to N.J.S.A. 52:14B-3, each agency is required to adopt a rule which describes its organization and structure. The rule must state the agency's method of operation and the manner in which the public may obtain information, applications or forms and how applications, requests and submissions may be made.

Organizational rules may be adopted by an agency without prior notice or hearing and are effective upon filing with the OAL.

K. CHALLENGING A RULE

R. 2:2-3(a)(2) provides that persons wishing to challenge an agency rule may appeal to the Appellate Division. In general, the court rule provides for a review of the validity of an administrative rule once administrative review remedies have been exhausted. Agency rules are challenged on the basis of improper delegation, inconsistency with statutory authorization (*ultra vires*), or procedural irregularities (deviations from the requirements of the Administrative Procedure Act, as outlined above).

An agency's rules will be presumed to be legal, unless they are clearly *ultra vires* on their face. The burden of demonstrating their invalidity rests upon the party attacking them. *Matter of Health Care Administrative Board*, 83 N.J. 67 (1980), *cert. denied, appeal dismissed, Wayne Haven Nursing Home v. Finley*, 449 U.S. 944 (1980). *See also, In re Weston*, 36 N.J. 258 (1962), *cert. denied*, 369 U.S. 864 (1961), which discusses this rebuttal presumption, as well as *D.S. v. East Brunswick Tp. Bd. of Education*, 88 N.J. Super. 592 (App. Div. 1983), in which it was pointed out that a finding that a regulation was *ultra vires* is disfavored. Moreover, it has been held that the existence of facts which were sufficient to justify the creation of a rule must be presumed. *Consolidation Coal Co. v. Kandle*, 105 N.J. Super. 104 (App. Div. 1969), *aff'd*, 54 N.J. 11 (1969).

It is well settled that an agency must engage in the construction of the language of the enabling statute if it is fairly susceptible of more than one meaning. However, if the legislation's terms are clear and unambiguous, then it is prohibited from fashioning rules which amend, alter,

enlarge or limit the confines of the enabling legislation. *New Jersey State Chamber of Commerce v. New Jersey Electric Law Enforcement Comm.*, 83 N.J. 57 (1980); *Hotel Suburban System, Inc. v. Holderman*, 42 N.J. Super. 84 (App. Div. 1956).

It is axiomatic that when any rule contravenes a statute, the rule has no force, and that the statute will control. *Terry v. Harris*, 175 N.J. Super. 482 (Law Div. 1980). *Accord*, 1957 Attorney General Formal Opinion 6. In deciding whether an administrative rule is valid, courts are required to determine whether the regulation is consistent with the policy which motivated the enabling legislation. *Matter of Schedule of Rates for Barnett Memorial Hospital*, 92 N.J. 31 (1983). Generally, regulations which are promulgated by an administrative agency pursuant to statutory authority are valid if they are reasonably related to the purposes of the enabling legislation. *Seritella v. Engleman*, 462 F.2d 601 (3d Cir. 1972).

The fact that the agency may have acted in good faith when it exceeded its authority is of no consequence. *Kamienski v. Board of Mortuary Science, Dept. of Law and Public Safety*, 80 N.J. Super. 366 (App. Div. 1963). When reasonable doubt exists as to whether a specific power was delegated by the legislature to an agency, the agency's exercise of the power is *ultra vires* and void. *Allendale Field and Stream Ass'n. v. Legalized Games of Chance Control Commission*, 76 N.J. Super. 313 (App. Div. 1962), *rev'd*, 41 N.J. 209 (1963).

A state agency may not exceed required statutory policy in the exercise of its rulemaking power. *Gladden v. Board of Trustees of Public Employees Retirement System*, 171 N.J. Super. 363 (App. Div. 1979); *In re State Board of Dentistry Increase in Fees*, 166 N.J. Super. 219, 233 (App. Div. 1979). An administrative official is a creature of legislation who must act only within the bounds of authority delegated to him. *Matter of Jamesburg High School, School District of Jamesburg, Middlesex County*, 83 N.J. 540 (1980). Similarly, *see*, *Malone v. Fender*, 158 N.J. Super. 190 (App. Div. 1978), supplemented 160 N.J. Super. 221 (App. Div. 1978), *rev'd*, 80 N.J. 129 (1979), which held that an agency's implementation of a statute cannot deviate from the principles and policies of the statute.

The rules of an administrative agency must not only be within the scope of the delegator's authority, but must also be sufficiently definite to inform those subject to them as to what is required, as well as possess sufficient flexibility to accommodate day-to-day changes in the regulated area. Thus, the use of phrases like "reasonable number" in rules may be sustained upon court review. *Matter of Health Care Administration Board*, 83 N.J. 67, 82 (1980), *cert. denied, appeal dismissed, Wayne Haven Nursing Home v. Finley*, 449 U.S. 944 (1980).

The vagueness standards which are applied to the evaluation of statutes are also used in assessing the propriety of administrative rules. Thus, a rule is defective only if it forbids or requires action in terms so vague "that men of common intelligence must necessarily guess as to its meaning and differ as to its application." *New Jersey Ass'n of Health Care Facilities v. Finley*, 168 N.J. Super. 152, 166 (App. Div. 1979), *aff'd, Matter of Health Care Administrative Board*, 83 N.J. 67 (1980), *cert. denied, appeal dismissed, Wayne Haven Nursing Home v. Finley*, 449 U.S. 944 (1980). *Accord, Essex County Welfare Board v. Klein*, 149 N.J. Super. 241 (App. Div. 1977).

Agency changes to proposed rules upon adoption have been upheld as not so substantive as to require reproposal, *In the Matter of the Adoption of N.J.A.C. 9A:10-7.8(b),* 327 N.J. Super. 149 (App. Div. 2000), and invalidated as being too substantive when examined under the factors currently set forth in N.J.A.C. 1:30-6.3, *In the Matter of the Commission's Failure to Adopt 861 CPT Codes and to Promulgate Hospital and Dental Fee Schedules*, 358 N.J. Super. 135 (App. Div. 2003), and *In re Adopted Amendments: N.J.A.C. 7:15-8,* 349 N.J. Super. 320 (App. Div. 2002).

The *New Jersey Administrative Code* does not include the summary and the impact and other narrative statements which were published in the *New Jersey Register* when the rule was proposed. In addition, the *Code* does not include the Summary of Public Comments and Agency Responses, and any summary of changes upon adoption which appear in the Notice of Adoption. This information may be essential in construing or challenging a rule. To locate this information, the *Code's* annotation references to the *New Jersey Register* amendments, etc. should be consulted.

The publication of a rule in the *New Jersey Administrative Code* and *New Jersey Register* establishes a rebuttable presumption that the rule was duly filed and that the text of the rule as published is the text of the adopted rule. N.J.S.A. 52:14B-5(e).

Every document accepted by the OAL is maintained on record by the OAL's Division of Administrative Rules. When the Office of Administrative Law accepts a document for filing, it notes the hour and date of acceptance and assigns it a document number. Any person, upon request, may examine these documents. Copies may be provided for a fee. N.J.S.A. 47:1A-2.

Each agency must retain for at least one year a record of any comments or other material received in response to a pre-proposal or proposal; this record must be kept for three years if the rule is adopted. N.J.A.C. 1:30-5.6. If a public hearing or other proceeding was held, the agency must maintain a description of the proceeding. The agency's record is evidence of its compliance with the legislative mandate to provide an opportunity for comment, and is available for public inspection.

Obviously, the documents on file with the OAL and the documents maintained by the agency promulgating the rule may be important in successfully challenging a rule before the Appellate Division.

APPENDIX A

SAMPLE FORMS

APPENDIX A

Index to Sample Forms

FORM 1
TRANSMITTAL FORM (BLANK)

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON STREET
NEWARK, NEW JERSEY 07102
(201) 648-6003

FROM:

_____
NAME OF AGENCY

_____
ADDRESS

_____
TRANSMITTING OFFICER

_____
TELEPHONE NUMBER

****
***OAL OFFICIAL USE ***
***COUNTY_____ ***
*** OMH _____ ***
****

_____
_____
_____
_____
_____
Name of Contested Case or Short Title

_____
Agency Docket/Reference Number

THE FOLLOWING ADDITIONAL INFORMATION IS REQUIRED:

1. **Nature of the case. Please include references to statutes or rules and briefly summarize the facts and law involved. Attach pleadings to this form.**

_____
_____
_____
_____

2. **Estimated time required for hearing.**

_____ **Days or** _____ **Hours**

3. **Legal requirements (State or Federal) mandating a date for Agency Decision:**

_____ **Yes** _____ **No; If yes, please specify requirement and citation:**_____
_____

4. **Is a court stenographer requested?**

_____ **Yes** _____ **No**

5. **Special features to be anticipated in this matter, i.e., emergent relief, discovery motions, prehearing conference, conference hearing, remand, expedited hearings, location (county).**

_____
_____
_____
_____

6. **Has the agency conducted any settlement?**

_____ **Yes** _____ **No; if yes, date** _____

7. **Is a barrier-free location needed?**

_____ **Yes** _____ **No** _____ **Uncertain**

8. **Have the attached documents been exchanged between the parties?**

_____ **Yes** ____ **No; if no, the documents shall be served on or offered to the parties on** _____.

9. **Names of other agencies claiming jurisdiction over transmitted dispute.**

_____
_____

10. **Names and addresses of all parties and their representatives (other than witnesses) to full extent known:**

_____
_____ **(Type on other side)** _____

Revised 07/01/87

FORM 1 (continued)

SERVICE LIST OF PARTIES (Use additional paper if necessary)

PETITIONER	ATTORNEY FOR PETITIONER
TELEPHONE #	TELEPHONE #
RESPONDENT	ATTORNEY FOR RESPONDENT
TELEPHONE #	TELEPHONE #
NAME	NAME
TELEPHONE #	TELEPHONE #
NAME	NAME
TELEPHONE #	TELEPHONE #
NAME	NAME
TELEPHONE #	TELEPHONE #

FORM 2
TRANSMITTAL FORM (BOARD OF PUBLIC UTILITIES)

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON STREET
NEWARK, NEW JERSEY 07102
(201) 648-6003

OFFICE OF ADMINISTRATIVE LAW
FILED
JAN 25 3 49 PM '89

FROM:

Board of Regulatory Commissioners
NAME OF AGENCY
Two Gateway Center, Newark, NJ 07102
ADDRESS
Suzanne N. Patnaude, Esq.
TRANSMITTING OFFICER
(201) 648-4518
TELEPHONE NUMBER

TO

00565-89

*OAL OFFICIAL USE

* *COUNTY Mercer
OMH o/cc

January 23, 1989

PUC

Kaiser v. Jersey Central Power & Light Company
Name of Contested Case or Short Title

EC881213280
Agency Docket / Reference Number

THE FOLLOWING ADDITIONAL INFORMATION IS REQUIRED:

1. Nature of the case. Please include references to statutes or rules and briefly summarize the facts and law involved. Attach pleadings to this form.

Bill Dispute - Theft of Service
N.J.S.A. 2C:20-8

2. Estimated time required for hearing.

3 Days or _____ Hours

3. Legal requirements (State or Federal) mandating a date for Agency Decision:

_____ Yes X No; If yes, please specify requirement and citation: _____

4. Is a court stenographer requested?

X Yes _____ No N.J.A.C. 14:1-6.20 and 10.10

5. Special features to be anticipated in this matter, i.e., emergent relief, discovery motions, prehearing conference, conference hearing, remand, expedited hearings, location (county).

Prehearing Conference

6. Has the agency conducted any settlement?

_____ Yes X No; if yes, date _____

7. Is a barrier-free location needed?

_____ Yes _____ No X Uncertain

8. Have the attached documents been exchanged between the parties?

X Yes ____ No; if no, the documents shall be served on or offered to the parties on _____

9. Names of other agencies claiming jurisdiction over transmitted dispute.

10. Names and addresses of all parties and their representatives (other than witnesses) to full extent known:

(Type on other side)

FORM 3
MOTION FOR EMERGENT RELIEF

STATE OF NEW JERSEY

DEPARTMENT OF ENERGY

BOARD OF PUBLIC UTILITIES

Petitioner	:	
	:	MOTION FOR EMERGENT RELIEF
vs.	:	
	:	BPU Docket No.:
New Jersey Bell Telephone Company	:	
Respondent.	:	

Respondent, New Jersey Bell Telephone Company, a New Jersey Corporation, having its principal office at 540 Broad Street, Newark, New Jersey 07101, by way of Motion says:

1. Petitioner is as of this date indebted to respondent for the amount of $55,820.19 for services rendered at Tariff rates. (See attached affidavit.)

2. Petitioner refuses to pay any part of the outstanding charges or for current services.

3. Petitioner continues to utilize respondent's services accumulating additional charges at Tariff rates averaging $247 per day (approximately $7,500 per month).

4. Respondent has been led to believe that petitioner is unable to pay its outstanding debts and is, therefore, utilizing this dispute procedure to forestall the inevitable collection of debts owed by it.

FORM 3 (continued)

5. Petitioner refuses to discuss with respondent's personnel what portion of the outstanding bill it considers in dispute. Rather, petitioner makes vague allegations to "consequential damages" for lost business and cavalierly states that it will not pay any bills (past, present or future) until its allegations of dispute are resolved. However, it expects respondent to continue providing service without payment.

6. Respondent was instructed by the Board's Regulatory Officer, _____ _____, not to interrupt service to the petitioner pending the filing of a petition and this motion.

7. Respondent estimates that even at most, only a few thousand dollars can be considered to be legitimately disputed.

8. Respondent has afforded very liberal treatment to petitioner's complaints and has granted over ten thousand dollars credit since 1980.

9. Irreparable harm will be done to respondent and its ratepayers if this large outstanding debt is found to be properly owing to respondent and cannot be subsequently collected.

WHEREFORE, respondent requests that the Board ORDER:

1. That petitioner pay to respondent all current and future charges, as rendered, in order to avoid interruption of service; and

2. That pursuant to N.J.A.C. 14:3-7.13(b), petitioner immediately pay to respondent, the sum of $55,820.19, to be held in ESCROW pending Board resolution of this dispute. In this manner all parties will be protected since petitioner will continue to receive service and

FORM 3 (continued)

respondent will be assured of satisfaction of the debt. Further, the Board should direct that the Administrative Law Judge assigned to hear the matter should make a determination as to how much is in legitimate dispute thereby permitting the remainder in escrow to be released. If at the conclusion of the case, the Board finds that any of the disputed amount was not properly owing to respondent, then respondent will return it to the petitioner with interest at the Tariff deposit rate. Attached for the Board's consideration, is a proposed form of Order.

_____

Attorney for Respondent
New Jersey Bell Telephone Company
540 Broad Street
Newark, New Jersey 07101

Dated: June 18,

FORM 4
PETITION

PETER HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08623

By:
Deputy Attorney General

STATE OF NEW JERSEY
PUBLIC UTILITIES
BPU DOCKET NO. 845-148

IN THE MATTER OF THE PETITION	:
OF HMDC FOR APPROVAL OF ISSUANCE	:
OF A NOTE I THE AMOUNT OF $356,500	:
PLUS INTEREST FOR LANDFILL	:
ACQUISITION AND PREPARATION	:
COSTS AND FOR EMERGENT INTERIM	:
RATE RELIEF AMENDING THE HMDC	:
UNIFORM DISTRICT-WIDE AVERAGE	:
RATE FOR SOLID WASTE DISPOSAL	:

Petitioner, the Hackensack Meadowlands Development Commission "(HMDC") located at 1 De Korte Plaza, Lyndhurst, New Jersey 07107, County of Bergen, State of New Jersey respectfully petitions the Board as follows:

FORM 4 (continued)

1. Pursuant to N.J.S.A. 13:17-1 *et seq.* the Hackensack Meadowlands Development Corporation ("HMDC") is charged with the responsibility of providing for reclamation, planning development and redevelopment of the Hackensack Meadowlands. Part of its responsibility includes provision of solid waste disposal services.

2. The HMDC submits this petition seeking to adjust the uniform average disposal rates in the Hackensack Meadowlands District ("MDC"). Specifically, HMDC seeks approval, pursuant to N.J.S.A. 48:3-9, for the issuance of a 3½ year note of indebtedness in the principal amount of $356,500. Interest on this note is anticipated to be approximately $43,671. The HMDC further seeks an emergent increase in the district-wide average disposal rate reflecting this expense.

3. The requested rate adjustment is necessary to open a new landfill site in the HMD. The revenue generated by the adjustment will be used as follows:

a)	$177,000	-	leasehold acquisition costs
b)	$ 10,000	-	title work
c)	$ 12,500	-	land survey
d)	$ 7,000	-	appraiser's fees
e)	$100,000	-	access road
f)	$ 50,000	-	engineering fees
g)	$ 43,671	-	interest expense

4. There are presently three existing solid waste disposal facilities within the HMD, namely the Hackensack Meadowlands Commission's Baler-Balefill located in North Arlington and Kearney; the Kingsland Landfill facility located partly in Lyndhurst and partly in North

FORM 4 (continued)

Arlington (owned by HMDC and operated by the Bergen County Utilities Authority) and the 1A site located in Kearney (owned by HMDC and operated by the Municipal Sanitary Landfill Authority).

5. The 1A site is the depository for solid waste generated primarily from Essex County. HMDC began its activities toward the acquisition and opening of 1A after it entered into a consent agreement on May 2, 1983 with Essex County wherein it agreed to provide disposal sites for Essex County waste until July 1987. Essex County v. HMDC, L-21706-81. 1A commended operations in April 1983 and will reach capacity on April 15, 1984.

6. In view of the impending closure of 1A, it has become necessary for the HMDC to have in operation by April 15, 1984, an alternative site for Essex County solid waste. Both the HMDC and the DEP have determined that the 1C site located in and owned by the Town of Kearney is the only possible alternative disposal site to 1A.

7. The firm of Camp, Dresser and McGhee has been commissioned to conduct a study of the environmental measures necessary to properly open and ultimately close the proposed 1C landfill site in an environmentally sound manner.

8. Before the 1C site can operate as a landfill, HMDC must procure financing in the amount of $356,500 plus interest to finance the $206,500 needed to cover leasehold acquisition costs: $100,000 to refurbish the access road leading to he 1C site and $50,000 to cover the engineering fees, asset forth in paragraph 3.

FORM 4 (continued)

9. Attached as exhibit A is a schedule of the proposed averaged district-wide rate. The HMDC requests that the Board implement the amended rate immediately on an emergent interim basis pursuant to N.J.S.A. 48:2-21.1.

10. It is anticipated that upon completion of the environmental study referred to herein, the HMDC will file a petition seeking further rate relief and will request that relief as may be necessary be included in the HMDC district-wide average rate.

11. Prepared testimony in support of this petition is annexed hereto as exhibit B.

12. Without the emergent relief requested the HMDC will be unable to continue to render safe, adequate and proper solid waste service in the HMD after April 15, 1984.

13. Notice of this filing including a statement of the effect thereof on users of the District has been served by mail upon the municipal clerk of each of the municipalities in which service is rendered by HMDC. Said municipalities are listed in exhibit C annexed hereto. The form of such notice is annexed hereto as exhibit D.

14. Notice of this filing and two copies of the petition will be served upon the Division of Rate counsel, in accordance with the Board's regulations.

15. Notice of the filing including a statement of the effect thereof on users of the District will be served by publication in newspapers published and circulated in the service area. The form of such notice to the users of the District is annexed hereto as exhibit E.

FORM 4 (continued)

16. WHEREFORE, the HMDC asks the Board:

a) To approve the issuance of a 3½ year note in the amount of $356,500 plus $43,671 interest for landfill acquisition and preparation work;

b) To approve emergent interim relief amending the HMDC uniform district-wide average rate for solid waste disposal reflecting such costs;

c) For such other relief as the Board may deem appropriate.

Respectfully submitted,

PETER HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner, Hackensack
Meadowlands Development Commission

By: _____

Deputy Attorney General

Dated:

FORM 5
ANSWER

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITIES

Petitioner	:	
	:	ANSWER
vs.	:	
	:	BPU Docket No.: 826-540
New Jersey Bell Telephone Company	:	
Respondent.	:	

Respondent, New Jersey Bell Telephone Company, a New Jersey corporation, having its principal office at 540 Broad Street, Newark, New Jersey 07101, by way of Answer, says:

FIRST COUNT

1. Respondent has no formal knowledge of the allegations in Paragraph 1, and therefore, leaves petitioner to its proofs.

2. Respondent has no formal knowledge of the allegations in Paragraph 2, and therefore, leaves petitioner to its proofs.

FORM 5 (continued)

3. Respondent's duty to petitioner is limited to recommending a system based on the information given to respondent by petitioner. In all cases, petitioner is obligated to make the final decisions in this regard.

4. Respondent's recommendations were proper and respondent followed the instructions of petitioner regarding all installations.

5. Respondent denies the allegations of Paragraph 5.

6. Respondent admits that arrearages have been accruing since 1981, but denies any breach of duty on respondent's part.

SECOND COUNT

1. Respondent denies the allegations of Paragraph 1.

2. Respondent denies that it was negligent and respondent states that it has no knowledge of petitioner's claim for lost income.

THIRD COUNT

1. Respondent denies the allegations of Paragraph 1.

FOURTH COUNT

1. Respondent has no knowledge of the allegations in Paragraph 1.

FIRST AFFIRMATIVE DEFENSE

Petitioner is in arrears to respondent for services rendered as of this date in the amount of $55,820.19 and petitioner continues to refuse to pay respondent even for current services being rendered.

FORM 5 (continued)

SECOND AFFIRMATIVE DEFENSE

Petitioner is in effect asking the Board to render judgment for "consequential damages" in its favor against respondent. (See for example the claim of $8,000 for lost business referred to in the Second Count.)

The Board has no jurisdiction to render judgment on claims for "consequential damages." Further, respondent's Tariff, as approved by the Board, specifically limits its liability to the customer to the proportionate charge to the customer for the period of the interruption of services.

THIRD AFFIRMATIVE DEFENSE

Respondent has, at all times involving petitioner, acted in good faith and in accordance with its lawfully filed Tariff and the Board's Rules and Regulations.

FOURTH AFFIRMATIVE DEFENSE

Petitioner had admitted to respondent that it is unable to pay the bills for service rendered by respondent.

FIFTH AFFIRMATIVE DEFENSE

The Board's Rules of Practice require that the Petitioner "shall clearly and concisely state the facts and relief sought," and "shall cite by appropriate reference the statutory provision or other authority under which the Board's action is sought," N.J.A.C. 14:1-6.1(a).

FORM 5 (continued)

SIXTH AFFIRMATIVE DEFENSE

To allow petitioner to avoid payment for previous services rendered, and to allow it to continue to receive services without paying for them amounts to an "unjust enrichment" of petitioner at the expense of respondent and its ratepayers.

WHEREFORE, respondent requests that:

1. The Board dismiss the petition; or

2. The Board permit respondent to discontinue telephone service to petitioner pending resolution of the dispute, or in the alternative, the Board order that petitioner immediately place in escrow, per instructions of the Board, all unpaid charges in the amount of $55,820.19 and that petitioner pay to respondent all current charges pending resolution of the dispute.

_____

Attorney for Respondent
New Jersey Bell Telephone company
540 Broad Street
Newark, New Jersey 07101

Dated: June 18,

FORM 6
PETITION FOR DECLARATORY JUDGMENT

BEFORE THE COMMISSIONER OF EDUCATION OF NEW JERSEY

CAPTION

PETITION FOR DECLARATORY JUDGMENT

Petitioner, _____, residing at _____, hereby requests the Commissioner to render a declaratory judgment concerning the application of [N.J.S.A. 18A:_____, N.J.A.C. 6:_____) to the controversy which has arisen between petitioner and respondent who resides at _____, by reason of

1. (Set forth in appropriate paragraphs the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of _____ and determine and declare _____.

_____
Signature of petitioner or his/her attorney

Date: _____

(Name of petitioner), of full age, being duly sworn upon his/her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.

2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

_____
(Signature)

Sworn and subscribed to before me this _____ day of 20_____.
(Signature)

FORM 7
NOTICE OF FILING

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

Filing Date:
****
pet_name

Notice of Filing

resp_name

****
Nature of proceeding:

This case was received by the Office of Administrative Law (OAL) on the above filing date and given the docket number above. You will receive another notice informing you of the date and location of the hearing. Please refer to the docket number in any correspondence and have the docket number available if you call the OAL.

The rules controlling the hearing, including discovery, motions, and other pre-hearing and post-hearing procedures, are found in N.J.A.C. 1:1-1 et. seq. These rules can be accessed through a link on the Office of Administrative Law's website: www.state.nj.us/oal. (see the "Rules" section under the Rules tab). Additional information about the hearing process is also on the website. (see the "Hearing" section under the Hearing tab).

Parties may represent themselves, may be represented by an attorney, or in some cases, may be represented by qualified nonlawyers. The standards for nonlawyer representation are in N.J.A.C. 1:1-5.4 et. seq. Nonlawyer representatives must submit a Notice of appearance/application on an OAL form at least 10 days before the hearing. Forms are available from the OAL clerk or on the OAL website (see "Notice of Appearance/Application under the Forms tab).

_____ _____

Date

FORM 8
NOTICE OF TELEPHONE PREHEARING CONFERENCE

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

Judge:
****
pet_name

Notice of
Telephone Prehearing

resp_name

****
Nature of proceeding:

A telephone prehearing conference in the above-captioned matter will begin on:

The telephone prehearing conference is limited to attorneys of record, approved non-lawyer representatives and pro se petitioners. Parties appearing without an attorney should contact this office immediately at the above number to supply a telephone number where they can be reached at the date and time listed above. Attorneys will be telephoned at their offices.

Parties must be familiar with the case and be fully prepared to discuss the items listed in N.J.A.C. 1:1-13.2. These rules can be accessed through a link on the Office of Administrative Law's website: www.state.nj.us/oal. (see the "Rules" section under the Rules tab).

If you do not participate in the prehearing conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

_____ _____

Date

FORM 9
NOTICE OF IN-PERSON PREHEARING CONFERENCE

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

Judge:

****

pet_name

Notice of
Prehearing Conference

resp_name

****

Nature of proceeding:

The prehearing conference in this case will be held on:

Directions are on the OAL website www.state.nj.us/oal (see the Locations tab).

The conference is limited to attorneys of record, approved non-lawyer representatives, and pro se petitioners. Parties must be familiar with the case and be fully prepared to discuss the items listed in N.J.A.C. 1:1-13.2. These rules can be accessed through a link on the Office of Administrative Law's website: www.state.nj.us/oal. (see the "Rules" section under the Rules tab).

If you do not attend the prehearing conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

_____ _____

Date

FORM 10
NOTICE OF SETTLEMENT CONFERENCE

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

ALJ:
****
pet_name Notice of

resp_name Settlement Conference

****
Nature of proceeding:

A settlement conference in this case will be held on:

The purpose of this conference is to explore the possibility of settlement. You must be fully prepared to discuss settlement terms. Representatives must either have authority to enter into a settlement agreement or have the person with such authority available by phone.

If you do not attend this conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

_____ _____

Date Clerk

FORM 11
NOTICE OF SETTLEMENT CONFERENCE - ABC

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

ALJ:

****

pet_name Notice of

resp_name Settlement Conference

****

Nature of proceeding:

A settlement conference in this case will be held on:

Directions are on the OAL website www.state.nj.us/oal (see the Locations tab).

The purpose of this conference is to explore the possibility of settlement. You must be fully prepared to discuss settlement terms. The licensee should bring a copy of the most recent tax return with them to the conference. Representatives must either have authority to enter into a settlement agreement or have the person with such authority available by phone.

If the case does not settle at the conference, a full hearing will be scheduled for a future date. The hearing will not be conducted by the judge who is at the settlement conference.

If you do not attend this conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

_____ _____

Date Clerk

FORM 12
NOTICE OF SETTLEMENT CONFERENCE – CIVIL SERVICE

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

Filing Date:

Judge:
****
pet_name

Notice of
resp_name Settlement Conference

****
Nature of proceeding:

A settlement conference in this case will be held on:

Directions are on the OAL website www.state.nj.us/oal (see the Locations tab).

The purpose of this conference is to explore the possibility of settlement. You must be fully prepared to discuss settlement terms. Union representatives and agency representatives must submit a completed notice of appearance application.

Agency representatives must have the authority to enter in to a settlement agreement or have the person with such authority available by phone. The employee must be present at the conference even if he or she is represented by an attorney or a union representative.

If the case does not settle, the judge will set a date for a full hearing which will be conducted on a later date. The hearing will not be conducted by the judge who is at the settlement conference. At the conference, the parties and the representatives of parties MUST be prepared to set a trial date. If you will not try the case, you must bring a list of available trial dates for the representative assigned to the hearing.

If you do not attend this conference, the file will be returned to the transmitting agency for appropriate action.

_____ _____

Date Clerk

FORM 13
NOTICE OF FILING AND HEARING - SPECIAL EDUCATION CASE

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

Filing Date:

Judge:
****
pet_name

Notice of Filing

resp_name

and Hearing

****
Nature of proceeding:

This case was received by the Office of Administrative law on the above filing date. The hearing in this case will be held on:

Directions are on the OAL website www.state.nj.us/oal (see the Locations tab).

The procedure for this hearing is fully set out in the rules of the Office of Administrative Law (OAL) at N.JA.C. 1:6A-1.1 et. seq. and N.J.A.C. 1:1-1 et. seq. These rules can be accessed through a link on the OAL's website: www.state.nj.us/oal. (see the "Rules" section under the Rules tab).

Parents and guardians should have received information concerning legal assistance. If you still need this information, call the Office of Special Education Programs at (609) 984-1286.

Parties must disclose all evidence including documents and summaries of anticipated testimony to the other party at least 5 days before the hearing. If you do not, you may be prevented from presenting the evidence at the hearing.

If you need to subpoena a witness, forms and instructions are on the Office of Administrative Law's website: www.state.nj.us/oal, (forms, subpoena).

Please bring two copies of any document you wish to offer into evidence.

If you do not attend the hearing, the judge may dismiss your case or order that the action requested by the other side be granted.

_____ _____

Date

FORM 14
NOTICE OF FILING AND HEARING – MOTOR VEHICLES

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

Filing Date:

Judge:

****

pet_name

Notice of

resp_name

Filing and Hearing

****

Nature of proceeding:

This case was received by the Office of Administrative Law on the above filing date and given the docket number above. You will receive another notice informing you of the date and location of the hearing. Please refer to the docket number in any correspondence and have the docket number available if you call the OAL.

The hearing in this case will be held on:

Directions are on the OAL website www.state.nj.us/oal (see the Locations tab).

You must appear in person unless you arrange to have your case heard on the papers. If you want to proceed on the papers, fill out the attached certification and return it and any other papers that you think are important to the OAL clerk at least ten days before the hearing. Send a copy of the certification and other documents to the Motor Vehicle Commission at the address listed on the attached service list. A judge will review all papers submitted by both parties and issue a decision. If you submit the certification on time, you do not need to appear at the hearing **unless** notified to do so.

You should have already received a copy of your driving record. If you do not have a copy, immediately contact the Motor Vehicle Commission at (609) 292-7500.

The rules controlling the hearing, including discovery, motions, and other pre-hearing and post-hearing procedures, are found in N.J.A.C. 1:13-1 et. seq. and 1:1-1 et. seq. These rules can be accessed through a link on the Office of Administrative Law's website: www.state.nj.us/oal. (see the "Rules" section under the Rules tab).

If you do not appear at the hearing or submit a certification form, the full penalty proposed by the Commission in the scheduled suspension notice will be imposed.

_____ _____

Date Clerk

FORM 15
NOTICE OF FILING AND HEARING – LEMON LAW

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

Filing Date:

Judge:
****
_pet_name

_resp_name

Notice of Filing
and
Summary Hearing

****
Nature of proceeding:

This claim has been transmitted to the Office of Administrative Law and given the docket number above. Please refer to the docket number in correspondence and have the docket number available if you call the OAL.

The hearing in this case will be held on:

Directions are on the OAL website www.state.nj.us/oal (see the Locations tab).

The rules for this hearing are in N.J.A.C. 1:13A-1 et. seq. and N.J.A.C. 1:1-1 et. seq. These rules can be accessed through a link on the Office of Administrative Law's website: www.state.nj.us/oal. (see the "Rules" section under the Rules tab). If you need to subpoena a witness, forms and instructions are on the Office of Administrative Law's website: www.state.nj.us/oal, (see the "Subpoena" section under the Forms tab).

If there are any papers you would like the judge to consider, please bring two copies of each paper to the hearing. The consumer should also bring any bills incurred in preparing for the hearing, including fees for mechanics' reports or testimony of expert witnesses. If the consumer is represented, the consumer's attorney must present a certified statement of fees to date and a statement of the hourly rate or other fee for appearing at the hearing.

If you do not attend the hearing, the file will be returned to the transmitting agency for appropriate action which may include granting the relief requested by the other party.

_____ _____

Date Clerk

FORM 16
NOTICE OF FILING AND HEARING – SPILL FUND ARBITRATION

OAL Docket. No.:

Agency Ref. No.:

Transmitting Agency:

Filing Date:
****

pet_name — Notice of Filing

resp_name — Arbitration Hearing

****

Nature of proceeding:

This matter has been transferred to the Office of Administrative Law by the New Jersey Spill Compensation Fund for an arbitration hearing before an Administrative Law Judge and given the docket number above. Please refer to the docket number in any correspondence and have the docket number available if you call the OAL. You will receive another notice informing you of the date and location of the hearing.

The arbitrator will contact the parties to schedule that hearing and any prehearing conferences.

The rules controlling this arbitration hearing are set forth at N.J.A.C. 7:1J-9.

_____ _____

Date

FORM 17
NOTICE OF PLENARY HEARING

OAL Docket No.:

Agency Ref. No:

Transmitting Agency:

Filing Date:

Judge:

****

pet_name

Notice of

resp_name

Hearing

****

Nature of proceeding:

The hearing in this case will be held on:

Directions are on the OAL website www.state.nj.us/oal (see the Locations tab).

The rules controlling the hearing are found in N.J.A.C. 1:1-1 et. seq. These rules can be accessed through a link on the Office of Administrative Law's website: www.state.nj.us/oal. (see the "Rules" section under the Rules tab). If you need to subpoena a witness, forms and instructions are on the Office of Administrative Law's website: www.state.nj.us/oal, (see the "Subpoena" section under the Forms tab).

If you do not attend the hearing, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

_____ _____

Date

FORM 18
MOTION FOR ADMISSION PRO HAC VICE

OAL DKT. NO. _____

AGENCY DKT. NO. _____

_____,
Petitioner,

v.

MOTION FOR ADMISSION
PRO HAC VICE

_____,
Respondent.

_____

I, _____, an attorney in good standing of the State of New Jersey and authorized to practice in this State, hereby move the Office of Administrative Law in accordance with *N.J.A.C.* 1:1-5.2 to permit the appearance of _____ _____, a member of the bar of _____ to appear *pro hac vice* in the above-captioned matter. An affidavit is attached and is relied upon in support of this motion.

I hereby certify that copies of this motion and the attached affidavit have been served upon all parties in the above-captioned matter.

_____ _____
Date (New Jersey Attorney)

FORM 19
AFFIDAVIT IN SUPPORT OF MOTION FOR ADMISSION PRO HAC VICE

OAL DKT. NO. _____

AGENCY DKT. NO. _____

_____,
Petitioner,

v.

AFFIDAVIT IN SUPPORT
OF MOTION TO APPEAR
PRO HAC VICE

_____,
Respondent.

I, _____, duly sworn according to law, depose and say:

1) I am an attorney in good standing admitted to practice in the (name of highest court in state of admission) of (state of admission). I am not admitted to practice in New Jersey, or I am admitted to practice in New Jersey but I do not maintain a bona fide office for the practice of law in this State.

2) I am associated in this matter with New Jersey counsel of record, _____ _____ who is qualified to practice law in this State pursuant to R. 1:21-1.

3) _____ (client's name) has requested my representation in this matter.

4) There is good cause for my admission *pro hac vice* in that
_____
_____
_____
_____.

5) I have paid to the New Jersey Lawyers' Fund for Client Protection and Ethics Financial Committee the fees required by R. 1:28-2 and 1:20-1(b).

FORM 19 (continued)

6) If this application to appear *pro hac vice* is granted, I agree to:

a) abide by the Office of Administrative Law (OAL) rules and all applicable New Jersey court rules, including all disciplinary rules;

b) consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against me or my firm that may arise out of my participation in this matter;

c) notify the OAL immediately of any matter affecting my standing at the bar of any court; and

d) have all pleadings, briefs and other papers filed with the OAL signed by the attorney of record.

Sworn to and subscribed
before me this _____ day
of _____, 20 ____.

_____

FORM 15
SUBPOENA

State of New Jersey

Attorney(s):
Office Address & Telephone No.:
Attorney(s) for:

****
*
*
*
*
****

OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO.
SUBPOENA

TO:

As provided by N.J.S.A. 52:14F-1, et seq. and N.J.A.C. 1:1-11.1, et seq., you are directed to appear and testify before the Office of Administrative Law at_____ _____ _____ on _____, 20____ at ___ o'clock____.m., and any continuations thereafter, on behalf of _____ _____in the above-entitled action. You must also bring with you documents indicated below, if any:

Questions concerning this subpoena shall be directed to the party requesting your appearance. If you have good cause not to appear at the hearing or produce any listed documents, you must present your reasons to the judge.

Failure to appear and bring the requested documents with you may subject you to a penalty.

Thomas F. Lowe, Clerk
Office of Administrative Law

Date:_____, 20____ By_____
(Signature of pro se party, attorney or non-lawyer representative)

Subpoena requested by_____ telephone number_____.

PROOF OF SERVICE

On_____, 20____, I served the original of this subpoena by delivering it to the person named at_____, or by mailing the original subpoena, certified mail return receipt requested, to the person named at_____.

I have paid to that person an attendance fee of $2.00 per day and, if the witness is not a resident of the county where the hearing will be held, a mileage fee of $2.00 per 30 miles of travel to and from the hearing.

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

Dated:_____, 20_____ _____
SIGNATURE

FORM 21
NOTICE OF MEDIATION

OAL Docket No.:

Agency Ref. No. :

Transmitting Agency :

Judge :

* *

Notice
of

Mediation

* *

Nature of proceeding:

Mediation in this case will be held on:

Directions are on the OAL website www.state.nj.us/oal (see the Locations tab).

The rules controlling the mediation are found in N.J.A.C. 1:1-20.1 et. seq. These rules can be accessed through a link on the Office of Administrative Law's website: www.state.nj.us/oal. (see the "Rules" section under the Rules tab).

All parties shall make available for the mediation a person who has authority to bind the party to a mediated settlement. Any agreement shall be binding on the parties and will have the effect of a contract in subsequent proceedings.

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

_____

Sandra Hlatky Deputy Clerk

APPENDIX B

NEW JERSEY ADMINISTRATIVE CODE, TITLE I

STATE OF NEW JERSEY
ADMINISTRATIVE CODE

TITLE 1:	Administrative Law (included in this text)
TITLE 2:	Agriculture
TITLE 3:	Banking and Insurance - Division of Banking
TITLE 4A.	Personnel
TITLE 5:	Community Affairs
TITLE 5A.	Military and Veterans' Affairs
TITLE 6/6A:	Education
TITLE 7:	Environmental Protection
TITLE 8:	Health and Senior Services
TITLE 9/9A:	Higher Education
TITLE 10:	Human Services
TITLE 10A:	Corrections
TITLE 11:	Banking and Insurance - Division of Insurance
TITLE 12:	Labor
TITLE 12A:	Commerce, Economic Growth and Tourism
TITLE 13:	Law and Public Safety
TITLE 14/14A:	Public Utilities/Energy
TITLE 15:	State
TITLE 15A:	Public Advocate
TITLE 16:	Transportation
TITLE 17:	Treasury - General
TITLE 18:	Treasury - Taxation
TITLE 19:	Other Agencies
	A. New Jersey Mortgage Finance Agency
	B. South Jersey Transportation Authority
	C. New Jersey Meadowlands Commission
	D. Highway Authority
	E. Turnpike Authority
	F. Public Employment Relations Commission
	G. Sports and Exposition Authority
	H. Election Law Enforcement Commission
	I. Economic Development Authority
	J. Schools Development Authority
	K. State Ethics Commission
	L. South Jersey Transportation Authority
	M. North Jersey District Water Supply Commission
	AA. Waterfront Commission of New York Harbor
TITLE 19K:	CASINOS

TITLE 1
OFFICE OF ADMINISTRATIVE LAW
TABLE OF CONTENTS BY CHAPTER

(For contents by subchapter and section, see specific chapter.)

CHAPTER 1
UNIFORM ADMINISTRATIVE PROCEDURE RULES
CHAPTER TABLE OF CONTENTS

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

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

SUBCHAPTER 10. DISCOVERY

SUBCHAPTER 11. SUBPOENAS

SUBCHAPTER 12. MOTIONS

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

SUBCHAPTER 14. CONDUCT OF CASES

SUBCHAPTER 15. EVIDENCE RULES

SUBCHAPTER 21. UNCONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

APPENDIX A CODE OF JUDICIAL CONDUCT FOR ADMINISTRATIVE LAW JUDGES

CHAPTER 1. UNIFORM ADMINISTRATIVE PROCEDURE RULES

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.

(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. 52:14F-5(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.

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.

1:1-1.3 Construction and relaxation

(a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practices and class action designations may not be applied unless such procedures are specifically statutorily authorized in administrative hearings.

(b) Except as stated in (c) below, procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice. The judge shall make such determinations and state the reasons for doing so on the record.

(c) The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

1:1-1.4 Computation of time

In computing any period of time fixed by rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. In computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

1:1-1.5 Conduct of administrative law judges

The Code of Judicial Conduct for Administrative Law Judges, as incorporated herein by reference as the chapter Appendix, shall govern the conduct of administrative law judges.

SUBCHAPTER 2. DEFINITIONS

1:1-2.1 Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Adjournment" means postponement of the hearing until another time.

"Administrative law judge" means a person appointed pursuant to N.J.S.A. 52:14F-4 or N.J.S.A. 52:14F-5(m) and assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings.

"Administrative rule" means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. N.J.S.A. 52:14B-2(e).

"Affidavit" means a written statement that is signed and sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation.

"Agency" includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor. N.J.S.A. 52:14B-2(a).

"Agency head" means the person or body authorized by law to render final decisions in contested cases, except that in the Department of Education, the State Board of Education is the head of an agency but the Commissioner of Education is authorized by statute to render final decisions.

"Appellant" means the party who is requesting a reversal or modification of a prior result.

"Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a contrary decision or peremptory finding on a material issue of fact.

"Burden of proof" means the obligation of a party to meet the requirements of a rule of law that a fact be proved by a preponderance of the evidence or by clear and convincing evidence.

"Clerk" means the Clerk of the Office of Administrative Law or any such scheduling or docketing officer designated by the head of an agency to oversee the administration of contested cases.

"Close of the record" means that time when the record for a case closes and after which no subsequently submitted information may be considered by the judge.

"Complainant" means the party who requests action or relief by filing a complaint.

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

"Discovery" means the process by which a party is permitted on demand or upon motion granted by a judge to view, inspect or receive a copy of documents, and gain other information necessary to prepare a case for hearing.

"Docket number" means the number given to a case by the Office of Administrative Law, which contains the abbreviation of the agency that sent the case to the Office of Administrative Law, a sequence number and the year. Sample:

HPW	8831	82
agency	sequence no.	year

"Evidence" is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay.

"Filing" means receipt of an original or clear copy of a paper by the proper office or officer.

"Final decision" means a decision by an agency head that adopts, rejects or modifies an initial decision by an administrative law judge, an initial decision by an administrative law judge that becomes a final decision by operation of N.J.S.A. 52:14B-10 or a decision by an agency head after a hearing conducted in accordance with these rules.

"Finding of fact" means the determination from proof or official notice of the existence of a fact.

"Hearing" means a proceeding conducted by a judge for the purpose of determining disputed issues of fact, law or disposition.

"Initial decision" means the administrative law judge's recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision.

"Intervention" means the process by which a non-party may, by motion, obtain all rights and obligations of a party in a case.

"Judge" means an administrative law judge of the State of New Jersey or any other person authorized by law to preside over a hearing in a contested case unless the context clearly indicates otherwise. The term includes the agency head when presiding over a contested case under N.J.S.A. 52:14F-8(b).

"Jurisdiction" means the legal power to hear or decide a case.

"Material fact" means a fact legally consequential to a determination of an issue in the case.

"Mediation" means a proceeding conducted after transmission in which an administrative law judge other than the judge assigned to preside over the hearing attempts to settle or compromise a dispute between opposing parties.

"Motion" means an application to a judge for a ruling or order.

"Participation" means the process by which a non-party may, by motion, be permitted to take limited part in a proceeding.

"Party" means any person or entity directly involved in a case, including a petitioner, appellant, complainant, respondent, intervenor, or State agency proceeding in any such capacity.

"Petitioner" means the party who is requesting relief or action at the hearing.

"Pleadings" means written statements of the parties' respective claims and defenses. A pleading may be a petition, complaint, answer, order to show cause or any other form permitted by an agency's rules.

"Plenary hearing" means a complete and full proceeding conducted before a judge, providing the parties with discovery, the opportunity to present evidence, to give sworn testimony, to cross-examine witnesses and to make arguments.

"Prehearing conference" means a meeting that may be held in advance of the hearing between the judge, representatives of the parties and, sometimes, the parties to discuss and set out the issues to be decided in the case, how the case will be presented and any other special matters required by the judge to be discussed and resolved in advance of the hearing.

"Presumption" means a rebuttable assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the contested case.

"Principal of a close corporation" means either a substantial shareholder of a corporation that is not publicly owned or an officer or executive employee who is actively involved in managing the business of such a corporation.

"Proceeding on the papers" means a summary proceeding conducted without any personal appearance or confrontation of the parties before the judge. The hearing is conducted through the submission of pleadings, affidavits, records or documents to the Office of Administrative Law for a decision by an administrative law judge.

"Proof" means all of the evidence before the judge relevant to a fact in issue which tends to prove the existence or nonexistence of such fact.

"Pro se" means a person who acts on his or her own behalf without an attorney or other qualified non-lawyer representative.

"Record" means all decisions and rulings of the judge and all of the testimony, documents and arguments presented before, during and after the hearing and accepted by the judge for consideration in the rendering of a decision.

"Relevant evidence" means evidence having any tendency in reason to prove any material fact.

"Respondent" means the party who answers or responds to a request for relief or action.

"Service" means the delivery (by mail or in person) of a paper to a party or any other person or entity to whom the papers are required to be delivered.

"Settlement" means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including:

1. Pre-transmission settlement efforts by an agency;
2. Pre-transmission settlement efforts by an administrative law judge at the request of an agency;
3. Mediation by an administrative law judge; and
4. Post-transmission settlement conferences by an administrative law judge or by a staff attorney employed by the Office of Administrative Law.

"Subpoena" means an official paper that requires a person to appear at a hearing to testify and/or bring documents.

"Telephone hearing" means a proceeding conducted by telephone conference call.

"Uncontested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case.

"Withdrawal" means a decision by a party voluntarily relinquishing a hearing request or a raised defense.

SUBCHAPTER 3. COMMENCEMENT OF CONTESTED CASES; JURISDICTION OF THE OFFICE OF ADMINISTRATIVE LAW

1:1-3.1 Commencement of contested cases in the State agencies

(a) A contested case shall be commenced in the State agency with appropriate subject matter jurisdiction. A contested case may be commenced by the agency itself or by an individual or entity as provided in the rules and regulations of the agency.

(b) A request for a contested case hearing may not be filed with the Office of Administrative Law by the individual or entity requesting the hearing.

1:1-3.2 Jurisdiction of the Office of Administrative Law

(a) The Office of Administrative Law shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the Office of Administrative Law or as otherwise authorized by law, except as provided by N.J.A.C. 1:1-17. The Office of Administrative Law shall not receive, hear or consider any pleadings, motion papers, or documents of any kind relating to any matter until it has acquired jurisdiction over that matter, except as provided by N.J.A.C. 1:1-17.

(b) When the Office of Administrative Law acquires jurisdiction over a matter that arises from a State agency's rejection of a party's application, and at the hearing the party offers proofs that were not previously considered by the agency, the judge may either allow the party to amend the application to add new contentions, claims or defenses or, if considerations of expediency and efficiency so require, the judge shall order the matter returned to the State agency. If the matter is returned to the agency and thereafter transmitted for hearing, the agency's response to any new contentions, claims or defenses shall be attached to the transmittal form required by N.J.A.C. 1:1-8.2.

(c) Matters involving the administration of the Office of Administrative Law as a State agency are subject to the authority of the Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of 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 or 14.14 and 14.15 consisting of the assessment of costs, expenses, or fines;
5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3;
6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b); and
7. Appearance of attorneys pro hac vice pursuant to N.J.A.C. 1:1-5.2.

1:1-3.3 Return of transmitted cases

(a) A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting agency if the transmitting agency head so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, the Office of Administrative Law shall return the case.

(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case. A copy of the explanation shall be served on all other parties. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

(c) Upon returning any matter to the transmitting agency, the Clerk shall issue an appropriate notice to the parties which shall advise the parties of the time limit and requirements for explanations as set forth in (b) above.

(d) The agency head may extend the time limit for receiving explanations regarding the failure to appear when good cause is shown.

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:1-4.1 Determination of contested case

(a) After an agency proceeding has commenced, the agency head shall promptly determine whether the matter is a contested case. If any party petitions the agency head to decide whether the matter is contested, the agency shall make such a determination within 30 days from receipt of the petition and inform all parties of its determination.

(b) When a question arises whether a particular matter is a contested case, legal advice shall be obtained from the Attorney General's office.

1:1-4.2 Settlement by agencies prior to transmittal to the Office of Administrative Law

If an agency attempts settlement prior to transmitting the matter to the Office of Administrative Law, settlement efforts may be conducted in any manner the agency believes may be appropriate and productive. The agency may utilize its own personnel or may request in writing to the Director of the Office of Administrative Law the services of an administrative law judge. An administrative law judge who conducts pre-transmission settlement efforts at the request of an agency will not thereafter be assigned to hear the case if settlement efforts are unsuccessful and the case is transmitted.

SUBCHAPTER 5. REPRESENTATION

1:1-5.1 Representation

A party may represent him or herself, be represented by an attorney authorized to practice law in this State, or, subject to N.J.A.C. 1:1-5.4 and 1:1-5.5, be represented or assisted by a non-lawyer permitted to make an appearance in a contested case by New Jersey Court Rule R. 1:21-1(e) or be represented by a law graduate or student pursuant to R. 1:21-3(b). Except as provided by N.J.A.C. 1:1-5.4 and 1:1-5.6, a corporation must be represented by an attorney.

1:1-5.2 Out-of-State attorneys; admission procedures

(a) An attorney from any other jurisdiction, of good standing there, or an attorney admitted in this State, of good standing, who does not maintain a bona fide office for the practice of law, may, at the discretion of the judge, be admitted pro hac vice for the one occasion to participate in the

proceeding in the same manner as an attorney authorized to practice in this State pursuant to New Jersey Court Rule R. 1:21-1 by complying with the following procedure:

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, except for attorneys who are employees of and are representing the United States of America or a sister state, shall state that payment has been made to the New Jersey Lawyers Fund for Client Protection. 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.

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.

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(f), 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;
8. County or local government employees in Civil Service cases; and
9. Individuals representing claimants or employers before the Appeal Tribunal or Board of Review of the Department of Labor and Workforce Development.

(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 Family Development, Division of Medical Assistance and Health Services, Division of Youth and Family Services and Department of Labor Vocational Rehabilitation cases.

i. At the hearing, the non-lawyer applicant shall certify 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 certify 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 certify that he or she is an employee of the 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; an explanation of his or her special expertise or experience in the matter in controversy; and that he or she has been assigned to represent the agency in the case and the Attorney General will not provide legal representation.

2. Oral application at the hearing may be made in public employment relations proceedings. At the hearing, the non-lawyer applicant shall certify 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. Oral application at the hearing may be made in cases before the Appeals Tribunal or Board of Review of the Department of Labor and Workforce Development. At the hearing, the non-lawyer applicant shall certify that he or she is not a suspended or disbarred attorney and that he or she is not receiving a fee for the appearance.

4. 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. Forms may be obtained from the Clerk of the Office of Administrative Law or through the State of New Jersey Office of Administrative Law website www.state.nj.us/oal/.

i. For non-lawyer employees seeking to represent a State agency, the Notice shall include a certification 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 certification, 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 certification 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 certification 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 certifying 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.

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 certification 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 certification 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 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 as defined in N.J.A.C. 1:1-2.1.

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 if a judge has not yet been assigned to the matter and shall be filed with the judge if a judge has been assigned and shall be served on all parties no later than 10 days prior to the scheduled hearing date. In Special Education cases, the Notice of Appearance/Application shall be filed with the Clerk and served on all parties no later than five days prior to the scheduled hearing date.

ix. The judge 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.

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 and 14.15. 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 and 14.15, 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.

1:1-5.6 Appearance without representation: State agencies

(a) In those cases where a State 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 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 upon which the agency intends to rely.
2. The judge shall, where appropriate, accept into the hearing record the agency's papers.

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.

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.

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; by certified mail, return receipt requested; 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.

(b) Except for service by publication or as otherwise required by this chapter or by State or Federal statute, proof of service shall not be necessary unless a question of notice arises.

(c) Where necessary to prove service, proof may be made by an acknowledgment of service signed by the attorney, any other representative or party, or by an affidavit of the person making service, or by a certificate of service appended to the paper to be filed and signed by the attorney or other representative for the party making service. Where appropriate, other competent proof that actual and timely notice existed of the contents of the paper may be considered as a substitute for service.

1:1-7.3 Filing; copies

(a) A paper shall be filed with the Clerk if the matter has not been assigned to a judge, or, if a judge has been assigned, with the judge assigned to the case.

(b) The Clerk or the judge, upon receiving papers for filing that do not conform to the requirements of these rules, may either return the papers with instructions for refiling or cure the defects and accept the papers for filing.

(c) All papers filed with the Office of Administrative Law shall be in duplicate. If the filer submits an additional copy of the paper to be filed with a self-addressed, stamped envelope, the Clerk or judge will return the paper to the filer marked with the date of filing.

(d) Evidence of filing shall be a notation showing the date of filing. When a paper is filed with a judge, the notation shall also identify the judge. A copy of such papers shall be forwarded by the filing party to the Clerk immediately.

1:1-7.4 Format of papers

(a) Every paper filed shall contain:

1. The Office of Administrative Law docket number of the proceeding or, if the case has not been transmitted, the agency docket number;
2. The name, address and telephone number of the person who prepared the paper; and
3. A caption setting forth the title of the proceeding and a brief designation describing the paper filed.

(b) All papers shall be on 8 1/2 " x 11" stock of customary weight and quality insofar as is practicable.

1:1-7.5 Filing by facsimile transmission

(a) A paper may be filed by facsimile transmission unless prohibited by the judge.

(b) Facsimile transmissions must comply with all requirements of this subchapter except N.J.A.C. 1:1-7.3(c) and 1:1-7.4(b).

(c) The party filing a document by facsimile transmission must include a certification indicating the method of service upon each party and stating that the original document is available for filing if requested by court or a party.

(d) Facsimile transmittals are filed as of the date of receipt by the Clerk or the judge, provided that the complete transmittal is received by 5:00 P.M. Facsimile transmittals received after 5:00 P.M. shall be deemed to be filed as of the next business day.

(e) A party requesting a facsimile transmittal from the Clerk or the judge shall be assessed a charge at the rate provided in the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

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

1:1-8.1 Agency filing with the Office of Administrative Law; settlement efforts

(a) After the parties have complied with all pleading requirements, the agency shall within 30 days either file the case with the Clerk of the Office of Administrative Law in the manner provided by N.J.A.C. 1:1-8.2 or retain it under the provisions of N.J.S.A. 52:14F-8 and notify all parties of the decision to retain.

(b) During the 30-day period in (a) above, an agency may attempt settlement in accordance with N.J.A.C. 1:1-4.2. At the conclusion of the 30-day period, unless all parties agree to continue the settlement efforts, the matter shall be either filed with the Office of Administrative Law or further retained under the provisions of N.J.S.A. 52:14F-8. After the 30th day of an agency's settlement efforts, any party may request that the agency transmit the matter to the Office of Administrative Law, provided that the agency does not intend to retain the case under N.J.S.A. 52:14F-8.

(c) An agency may file a contested case with the Office of Administrative Law immediately if the agency determines that settlement efforts would be inappropriate or unproductive.

1:1-8.2 Transmission of contested cases to the Office of Administrative Law

(a) In every proceeding to be filed in the Office of Administrative Law, the agency shall complete a transmittal form, furnished by the Clerk of the Office of Administrative Law, containing the following information:

1. The name of the agency transmitting the case;
2. The name, address and telephone number of the agency's transmitting officer;
3. The name or title of the proceeding, including the designation petitioner/respondent or appellant/appellee when appropriate;
4. The agency docket or reference number;
5. A description of the nature of the case, including a statement of the legal authority and jurisdiction upon which the agency action is based or under which the hearing is to be held, a reference to particular statutes and rules involved as well as a brief summary of the matters of fact and law asserted. If this information is included in a pleading that is attached to the transmittal form pursuant to (b) below, the agency may refer to the pleading in order to satisfy this requirement;
6. An indication as to whether the agency has attempted settlement;
7. An estimate of the total time required for the hearing;
8. Whether a court stenographer is requested. If a stenographer is not requested, the Office of Administrative Law will provide an audiotape recording for the hearing. When a stenographer is requested by the transmitting agency, the appearance fee shall be paid by the transmitting agency. When the transmitting agency notifies the Clerk that a court stenographer is required because a party so requests, the appearance fee shall be paid by that party;
9. Anticipated special features or requirements, including the need for emergent relief, discovery, motions, prehearing conference or conference hearing and whether the case is a remand;
10. The names, addresses and telephone numbers of all parties and their attorneys or other representatives, with each person clearly designated as either party or representative. For any party that is a corporation, the transmitting agency shall provide the name, address and telephone number of the corporation's attorney or non-lawyer representative qualified under N.J.A.C. 1:1-5.4(b)2v.
11. A request for a barrier-free hearing location if it is known that a handicapped person will be present; and
12. The names of any other agencies claiming jurisdiction over either the entire or any portion of the factual dispute presented in the transmitted contested case.
13. The transmitting agency may provide the name and address of one additional person other than a party or representative to receive a copy of all Clerk's notices in the case. If no person is designated, the OAL shall send an informational copy of notices to the agency's transmitting officer.

(b) The agency shall attach all pleadings to the transmittal form.

(c) The agency may affix to the completed transmittal form only documents which have been exchanged between the parties prior to transmission of the case to the Office of Administrative Law. If the agency affixes to the transmittal form documents that have not been exchanged between the parties, the agency shall either serve these documents upon the parties or offer them to the parties and shall inform the Clerk of such action in the transmittal form.

(d) If there was a previous hearing in a matter which upon appeal is subject to de novo review, the agency shall not transmit the record of the previous hearing to the Office of Administrative Law.

(e) If an agency has transmitted a case to the Office of Administrative Law, any party or agency aware that another agency is claiming jurisdiction over any part of the transmitted case shall immediately notify the Office of Administrative Law, the other parties and affected agencies of the second jurisdictional claim.

(f) The completed transmittal form and two copies of any attachments shall be filed with the Clerk of the Office of Administrative Law.

1:1-8.3 Receipt by Office of Administrative Law of transmitted contested case; filing; return of improperly transmitted cases

(a) Upon receipt of a properly transmitted contested case the Clerk shall mark the case as having been received and filed as of a particular date and time. Upon filing, the Clerk shall assign an Office of Administrative Law docket number to the contested case.

(b) The Clerk upon receiving a contested case that has not been transmitted in accordance with this subchapter may either return the case with instructions to the agency for retransmission or cure the transmission defects and accept the matter for filing.

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

1:1-9.1 Scheduling of proceedings

(a) When a contested case is filed, it may be scheduled for mediation, settlement conference, prehearing conference, proceeding on the papers, telephone hearing, plenary hearing or other proceeding.

(b) To schedule a proceeding, the Clerk or the judge's secretary may contact the parties to arrange a convenient date, time and place or may prepare and serve notice without first contacting the parties. Proceedings shall be scheduled for suitable locations, taking into consideration the convenience of the witnesses and the parties, as well as the nature of the case and proceedings.

(c) The Clerk may schedule a settlement conference whenever such a proceeding may be appropriate and productive. The Clerk may schedule mediation whenever all parties concur.

(d) A prehearing conference may be scheduled in any case whenever necessary to foster an efficient and expeditious proceeding.

(e) A proceeding on the papers may be scheduled in accordance with N.J.A.C. 1:1-14.8 for:

1. Division of Motor Vehicles cases dealing with excessive points and surcharges, pursuant to N.J.A.C. 1:13;

2. Department of Environmental Protection cases involving emergency water supply allocation plan exemptions, pursuant to N.J.A.C. 1:7; and

3. Any other class of suitable cases which the Director of the Office of Administrative Law and the transmitting agency agree could be lawfully decided on the papers.

(f) A telephone hearing may be scheduled for any case when the judge so directs, subject to the requirements of N.J.A.C. 1:1-15.8(e).

1:1-9.2 Cases commenced by order to show cause

When an agency head commences an action by order to show cause, the agency head may, prior to service and filing of the order to show cause, contact the Clerk, who will assign a judge and establish the time, place and date for a hearing on the matter. The agency shall insert in the pleading the information provided by the Clerk and promptly serve and file it in accordance with N.J.A.C. 1:1-7.

1:1-9.3 Priority scheduling

Priority in scheduling shall be given where requirements of law impose expedited time frames for disposition of a case. In all other cases, the transmitting agency or any party may make special scheduling requests to the Clerk.

1:1-9.4 Accelerated proceedings

(a) Any party may apply for accelerated disposition of a case. The application shall be in writing, on notice to all parties, and shall include the reasons for the request and a statement that all parties consent to acceleration.

(b) Applications for acceleration shall be filed as soon as circumstances meriting such action are discovered. Whenever possible, applications for acceleration by a transmitting agency shall be filed upon transmittal of the case and applications for acceleration by any other party shall be filed with the pleadings in the case.

(c) Applications for acceleration shall be made to the Director until such time as a party has appeared before a judge in person, by telephone, or in writing for a motion, prehearing or hearing. The Director may decide the request for acceleration or may assign the motion to a judge for determination. If a party has appeared before a judge in person, by telephone, or in writing for a motion, prehearing, or hearing, applications for acceleration shall be made to the judge.

(d) If the transmitting agency is a party and the agency either requests accelerated proceedings or concurs in a request for acceleration, the agency will be deemed to have agreed to abide by the 15-day decision deadline in (e)8 below. If the transmitting agency is not a party, the party requesting acceleration must secure from the transmitting agency agreement to render its final decision within 15 days as provided in (e)8 below.

(e) If the transmitting agency agrees to the 15-day decision deadline, all parties consent and the Director or the judge assigned to the case then finds that there is good cause for accelerating the proceedings, the judge shall schedule an accelerated hearing date and the case shall proceed in the following manner:

1. Formal discovery shall not be permitted, although parties may voluntarily exchange information, provided it does not delay the accelerated disposition of the case.

2. No mediation, prehearing conference or settlement conference shall be scheduled or conducted unless directed by the presiding judge.

3. Except for extraordinary circumstances establishing good cause, no adjournments shall be granted.

4. Prehearing motions shall not be permitted unless requested by the presiding judge.

5. Post-hearing submissions shall not be accepted except for the purpose of expressing the terms of a settlement or when requested by the presiding judge.

6. Initial decisions shall be issued within 15 days after the hearing is concluded.

7. Exceptions to the initial decision must be filed with the agency no later than six days after the initial decision was mailed to the parties. No replies or cross-exceptions are permitted.

8. Final decisions shall be entered within 15 days after receipt of the initial decision.

1:1-9.5 Notices

(a) Upon acceptance of a contested case for filing, the Office of Administrative Law shall notify the transmitting agency and all parties of the case's filing date and the Office of Administrative Law docket number. This notice shall include a description of the nature of the proceeding, a reference to the controlling hearing procedures, including discovery, and a reference to the right of persons to represent themselves or to be represented by any attorney or a qualified non-lawyer in certain situations. The Office of Administrative Law may also include in this notice any information deemed instructive or helpful to the parties and may combine this notice with any other notice, including the notice of hearing.

(b) The Office of Administrative Law shall provide all parties with timely notice of any mediation, settlement conference, prehearing conference, proceeding on the papers, telephone hearing, plenary hearing or other proceeding, except that in emergency relief proceedings pursuant to N.J.A.C. 1:1-12.6 the Office of Administrative Law may require the moving party to provide appropriate notice. Each notice shall apprise the parties of the presiding judge and the date, time and place of the proceeding. The Office of Administrative Law may also include in any proceeding notice any information deemed instructive or helpful to the parties.

(c) Notice shall be by regular mail, except that when emergent needs so require and the law permits, notice of proceedings may be by telephone or any other method reasonably certain to provide actual notice to the parties.

(d) All notices shall be written in plain language. See generally, N.J.S.A. 56:12-1 et seq.

(e) Each notice shall prominently display a telephone number where parties can obtain further assistance.

(f) All parties shall receive subsequent notices of all proceedings in any contested case. Subsequent notices shall apprise the parties of the date, time, place and nature of a proceeding and may be either written or effected by a statement made on the record.

1:1-9.6 Adjournments

(a) In the following matters, applications for adjournments shall be made to the Clerk until such time as a party has appeared before the judge in person, by telephone or in writing for a motion, prehearing or hearing; thereafter, applications for adjournments shall be made to the judge:

1. Hearings in Human Services (except Medical Assistance provider and rate); Motor Vehicle; Consumer Affairs Lemon Law cases;

2. Settlement conferences in Alcoholic Beverage Control, Department of Personnel civil service and Community Affairs cases.

(b) In all cases other than those specified in (a) above, applications for adjournments shall be made to the Clerk until such time as a judge has been assigned. Thereafter, applications for adjournments shall be made to the judge.

(c) Applications may be made in writing or by telephone. Telephone applications for adjournments which are granted must be confirmed in writing by the party requesting the adjournment. All adjournments that are granted will be granted for the shortest period possible and to a definite date.

(d) Adjournments will be granted only for good cause.

(e) Adjournments will not be granted to complete discovery if parties have not timely complied with N.J.A.C. 1:1-10.4.

(f) The fact that a party obtains the consent to an adjournment of his or her adversary will not always result in the granting of the adjournment.

(g) An attorney with a conflicting engagement in a court shall call the Clerk or judge as soon as the conflict is discovered. Attorneys should not assume that such conflicts will always result in an adjournment.

(h) When the judge or the Clerk requests, a party obtaining an adjournment will be responsible for securing from his or her adversary consent to a new date.

(i) All parties to an adjournment will be responsible for giving prompt notice to their witnesses as to the adjournment and the new scheduled date.

(j) When granting an adjournment after an untimely application, a judge may order any of the sanctions contained in N.J.A.C. 1:1-14.14 and 14.15.

1:1-9.7 Inactive list

(a) Where a party to a pending case demonstrates good cause, that party or his or her representative may move to place the case on the inactive list. A judge, as a condition to placing a matter on the inactive list, shall consider the public interest in the matter and may impose conditions appropriate to the case.

1. Upon affidavit or other adequate proof, the judge may determine to place the case on the inactive list for as brief a period as possible not to exceed six months.

2. The Clerk shall maintain the inactive list and shall return the case to an active status after the specified period has expired unless, upon motion and further proof, the judge determines that the party is still with just excuse unable to proceed.

3. A judge may order a case to continue on the inactive list for successive brief periods, each not to exceed six months.

4. All parties and the agency shall be notified of any action taken under this section.

(b) Cases may not be placed on the inactive list to await an appellate court decision involving other parties unless the appellate decision is so imminent and directly relevant to the matter under dispute so that some reasonable delay would be justified.

SUBCHAPTER 10. DISCOVERY

1:1-10.1 Purpose and function; policy considerations; public documents not discoverable

(a) The purpose of discovery is to facilitate the disposition of cases by streamlining the hearing and enhancing the likelihood of settlement or withdrawal. These rules are designed to achieve this purpose by giving litigants access to facts which tend to support or undermine their position or that of their adversary.

(b) It is not ground for denial of a request for discovery that the information to be produced may be inadmissible in evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) In considering a discovery motion, the judge shall weigh the specific need for the information, the extent to which the information is within the control of the party and matters of expense, privilege, trade secret and oppressiveness. Except where so proceeding would be unduly prejudicial to the party seeking discovery, discovery shall be ordered on terms least burdensome to the party from whom discovery is sought.

(d) Discovery shall generally not be available against a State agency that is neither a party to the proceeding nor asserting a position in respect of the outcome but is solely providing the forum for the dispute's resolution.

1:1-10.2 Discovery by notice or motion; depositions; physical and mental examinations

(a) Any party may notify another party to provide discovery by one or more of the following methods:

1. Written interrogatories;
2. Production of documents or things, including electronically stored information provided that a party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party from whom discovery is sought shall demonstrate that the electronically stored information is not reasonably accessible because of undue burden or cost;
3. Permission to enter upon land or other property for inspection or other purposes; and
4. Requests for admissions.

(b) Any party may request an informal, nontranscribed meeting with witnesses for another party in order to facilitate the purposes of discovery as described in N.J.A.C. 1:1-10.1. The other party and his or her representative must be given notice and the opportunity to be present. Such meetings are voluntary and cannot be compelled. Failure to agree to such meetings will not be considered good cause for permitting depositions pursuant to (c) below.

(c) Depositions upon oral examination or written questions and physical and mental examinations are available only on motion for good cause. In deciding any such motion, the judge shall consider the policy governing discovery as stated in N.J.A.C. 1:1-10.1 and shall weigh the specific need for the deposition or examination; the extent to which the information sought cannot be obtained in other ways; the requested location and time for the deposition or examination; undue hardship; and matters of expense, privilege, trade secret or oppressiveness. An order granting a deposition or an examination shall specify a reasonable time during which the deposition or

examination shall be concluded. The parties may agree to conduct depositions without the necessity of filing a motion; however, the taking of any depositions shall not interfere with the scheduled hearing date.

(d) A party taking a deposition or having an examination conducted who orders a transcript or a report shall promptly, without charge, furnish a copy of the transcript or report to the witness deposed or examined, if an adverse party, and, if not, to any adverse party. The copy so furnished shall be made available to all other parties for their inspection and copying.

1:1-10.3 Costs of discovery

(a) The party seeking discovery shall pay for all reasonable expenses caused by the discovery request.

(b) Where a proponent of any notice or motion for discovery or a party taking a deposition is a State agency, and the party or person from whom such discovery or deposition is sought is entitled by law to recover in connection with such case the costs thereof from others, such State agency shall not be required to pay the cost of such discovery or deposition.

1:1-10.4 Time for discovery; relief from discovery; motions to compel

(a) The parties in any contested case shall commence immediately to exchange information voluntarily, to seek access as provided by law to public documents and to exhaust other informal means of obtaining discoverable material.

(b) Parties shall immediately serve discovery requests.

(c) No later than 15 days from receipt of a notice requesting discovery, the receiving party shall provide the requested information, material or access or offer a schedule for reasonable compliance with the notice; or, in the case of a notice requesting admissions, each matter therein shall be admitted unless within the 15 days the receiving party answers, admits or denies the request or objects to it pursuant to N.J.A.C. 1:1-10.4(d).

(d) A party who wishes to object to a discovery request or to compel discovery shall, prior to the filing of any motion regarding discovery, place a telephone conference call to the judge and to all other parties no later than 10 days of receipt of the discovery request or the response to a discovery request. If a party fails without good reason to place a timely telephone call, the judge may deny that party's objection or decline to compel the discovery.

(e) The parties shall complete all discovery no later than 10 days before the first scheduled evidentiary hearing or by such date ordered by the judge.

1:1-10.5 Sanctions

By motion of a party or on his or her own motion, a judge may impose sanctions pursuant to N.J.A.C. 1:1-14.14 and 14.15 for failure to comply with the requirements of this subchapter. Before imposing sanctions, the judge shall provide an opportunity to be heard.

1:1-10.6 (Reserved)

SUBCHAPTER 11. SUBPOENAS

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

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

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

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

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

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

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

1:1-11.2 Service; fees

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

(b) Witnesses required to attend shall be entitled to payment by the requesting party at a rate of $ 2.00 per day of attendance if the witness is a resident of the county in which the hearing is held and an additional allowance of $ 2.00 for every 30 miles of travel in going to the place of hearing from

his or her residence and in returning if the witness is not a resident of the county in which the hearing is held.

1:1-11.3 Motions to quash

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

1:1-11.4 Failure to obey subpoena

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

1:1-11.5 Enforcement

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

SUBCHAPTER 12. MOTIONS

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

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

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

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

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

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

1:1-12.2 Motions in writing; time limits

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

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

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

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

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

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

1:1-12.3 Procedure when oral argument is directed

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

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

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

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

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

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

(a) At any time after a case is determined to be contested, a party may move for summary decision upon all or any of the substantive issues therein.

(b) The motion for summary decision shall be served with briefs and with or without supporting affidavits. The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact

challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

(c) Motions for summary decision shall be decided within 45 days from the date of submission. Any motion for summary decision not decided by an agency head which fully disposes of the case shall be treated as an initial decision under N.J.A.C. 1:1-18. Any partial summary decision shall be treated as required by (e) and (f) below.

(d) If, on motion under this section, a decision is not rendered upon all the substantive issues in the contested case and a hearing is necessary, the judge at the time of ruling on the motion, by examining the papers on file in the case as well as the motion papers, and by interrogating counsel, if necessary, shall, if practicable, ascertain what material facts exist without substantial controversy and shall thereupon enter an order specifying those facts and directing such further proceedings in the contested case as are appropriate. At the hearing in the contested case, the facts so specified shall be deemed established.

(e) A partial summary decision order shall by its terms not be effective until a final agency decision has been rendered on the issue, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6. However, at the discretion of the judge, for the purpose of avoiding unnecessary litigation or expense by the parties, the order may be submitted to the agency head for immediate review as an initial decision, pursuant to N.J.A.C. 1:1-18.3(c)12. If the agency head concludes that immediate review of the order will not avoid unnecessary litigation or expense, the agency head may return the matter to the judge and indicate that the order will be reviewed at the end of the contested case. Within 10 days after a partial summary decision order is filed with the agency head, the Clerk shall certify a copy of pertinent portions of the record to the agency head.

(f) Review by the agency head of any partial summary decision shall not cause delay in scheduling hearing dates or result in a postponement of any scheduled hearing dates unless the judge assigned to the case orders that a postponement is necessary because of special requirements, possible prejudice, unproductive effort or other good cause.

1:1-12.6 Emergency relief

(a) Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party.

(b) Applications for emergency relief shall be made directly to the agency head and may not be made to the Office of Administrative Law.

(c) An agency head receiving an application for emergency relief may either hear the application or forward the matter to the Office of Administrative Law for hearing on the application for emergency relief. When forwarded to the Office of Administrative Law, the application shall proceed in accordance with (i) through (k) below. All applications for emergency relief shall be heard on an expedited basis.

(d) The moving party must serve notice of the request for emergency relief on all parties. Proof of service will be required if the adequacy of notice is challenged. Opposing parties shall be given ample opportunity under the circumstances to respond to an application for emergency relief.

(e) Where circumstances require some immediate action by the agency head to preserve the subject matter of the application pending the expedited hearing, or where a party applies for emergency relief under circumstances which do not permit an opposing party to be fully heard, the agency head may issue an order granting temporary relief. Temporary relief may continue until the agency head issues a decision on the application for emergency relief.

(f) When temporary relief is granted by an agency head under circumstances which do not permit an opposing party to be fully heard, temporary relief shall:

1. Be based upon specific facts shown by affidavit or oral testimony, that the moving party has made an adequate, good faith effort to provide notice to the opposing party, or that notice would defeat the purpose of the application for relief;

2. Include a finding that immediate and irreparable harm will probably result before adequate notice can be given;

3. Be based on the likelihood that the moving party will prevail when the application is fully argued by all parties;

4. Be as limited in scope and temporary as is possible to allow the opposing party to be given notice and to be fully heard on the application; and

5. Contain a provision for serving and notifying all parties and for scheduling a hearing before the agency head or for transmitting the application to Office of Administrative Law.

(g) Upon determining any application for emergency relief, the agency head shall forthwith issue and immediately serve upon the parties a written order on the application. If the application is related to a contested case that has been transmitted to Office of Administrative Law, the agency head shall also serve the Clerk of Office of Administrative Law with a copy of the order.

(h) Applications to an agency head for emergent relief in matters previously transmitted to the Office of Administrative Law shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

(i) Upon determining an application for emergency relief, the judge forthwith shall issue to the parties, the agency head and the Clerk a written order on the application. The Clerk shall file with the agency head any papers in support of or opposition to the application which were not previously filed with the agency and a sound recording of the oral argument on the application, if any oral argument has occurred.

(j) The agency head's review of the judge's order shall be completed without undue delay but no later than 45 days from entry of the judge's order, except when, for good cause shown and upon notice to the parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(k) Review by an agency head of a judge's order for emergency relief shall not delay the scheduling or conduct of hearings in the Office of Administrative Law, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

1:1-12.7 Disposition of motions

Disposition of motions which completely conclude a case shall be by initial decision. Disposition of all other motions shall be by order.

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

1:1-13.1 Prehearing conferences

(a) A prehearing conference shall be scheduled in accordance with the criteria established in N.J.A.C. 1:1-9.1(d).

(b) The prehearing notice shall advise the parties, their attorneys or other representatives that a prehearing conference will cover those matters listed in N.J.A.C. 1:1-13.2 and that discovery should have already been commenced. At the time of the prehearing conference, the participants shall be prepared to discuss one or more alternate dates when the parties and witnesses will be available for the evidentiary hearing. The judge may advise the parties that other special matters will be discussed at the prehearing conference.

(c) In exceptional circumstances, the judge may, upon no less than 10 days' notice, require the parties to file with the judge and serve upon all other parties no later than three days before the scheduled prehearing conference, prehearing memoranda stating their respective positions on any or all of the matters specified in N.J.A.C. 1:1-13.2 set forth in the same sequence and with corresponding numbers or on other special matters specifically designated.

(d) A prehearing conference shall be held by telephone conference call unless the judge otherwise directs.

1:1-13.2 Prehearing order; amendment

(a) Within 10 days after the conclusion of the prehearing conference, the judge shall enter a written order addressing the appropriate items listed in (a)1 through 14 below and shall cause the same to be served upon all parties.

1. The nature of the proceeding and the issue or issues to be resolved including special evidence problems;
2. The parties and their status, for example, petitioner, complainant, appellant, respondent, intervenor, etc., and their attorneys or other representatives of record. In the event that a particular member or associate of a firm is to try a case, or if outside trial counsel is to try the case, the name must be specifically set forth at the prehearing. No change in such designated trial counsel shall be made without leave of the judge if such change will interfere with the date for hearing. If the name of a specific trial counsel is not set forth, the judge and opposing parties shall have the right to expect any partner or associate to proceed with the trial on the date of hearing;
3. Any special legal requirements as to notice of hearing;
4. The schedule of hearing dates and the time and place of hearing;
5. Stipulations as to facts and issues;
6. Any partial settlement agreements and their terms and conditions;
7. Any amendments to the pleadings contemplated or granted;

8. Discovery matters remaining to be completed and the date when discovery shall be completed for each mode of discovery to be utilized;
9. Order of proofs;
10. A list of exhibits marked for identification;
11. A list of exhibits marked in evidence by consent;
12. Estimated number of fact and expert witnesses;
13. Any motions contemplated, pending and granted;
14. Other special matters determined at the conference.

(b) Any party may, upon written motion filed no later than five days after receiving the prehearing order, request that the order be amended to correct errors.

(c) The prehearing order may be amended by the judge to accommodate circumstances occurring after its entry date. Unless precluded by law, a prehearing order may also be amended by the judge to conform the order with the proofs.

SUBCHAPTER 14. CONDUCT OF CASES

1:1-14.1 Public hearings; records as public; sealing a record; media coverage

(a) All evidentiary hearings, proceedings on motions and other applications shall be conducted as public hearings unless otherwise provided by statute, rule or regulation, or on order of a judge for good cause shown. Prehearing conferences and informal discussions immediately preceding the hearing or during the hearing to facilitate the orderly and expeditious conduct of the case may, at the judge's discretion, be conducted in public or in closed session and may or may not be recorded. Mediations and settlement conferences shall be held in closed session but may be recorded. All other proceedings in the presence of a judge shall be recorded verbatim either by a stenographic reporter or by sound recording devices. All discussions off the record, no matter how brief, except settlement discussions and mediations, shall be summarized generally for the record. The record of all hearings shall be open to public inspection, but the judge may, for good cause shown, order the sealing of the record or any part thereof.

(b) In considering whether to close a hearing and/or seal a record, the judge shall consider the requirements of due process of law, other constitutional and statutory standards and matters of public policy. The judge shall consider the need to protect against unwarranted disclosure of sensitive financial information or trade secrets, to protect parties or witnesses from undue embarrassment or deprivations of privacy, or to promote or protect other equally important rights or interests.

(c) When sealing a record, the judge must specify the consequences of such an order to all material in the case file including any evidence, the stenographic notes or audiotapes and the initial decision. The treatment of testimony or exhibits shall be on such terms as are appropriate to balance public and private rights or interests and to preserve the record for purposes of review. The judge shall also indicate what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceedings.

(d) All public hearings may be filmed, photographed and recorded, subject to reasonable restrictions established by the judge to avoid disruption of the hearing process. The number of cameras and lights in the hearing room at any one time may be limited. Technical crews and

equipment may be prohibited from moving except during recesses and after the proceedings are concluded for the day. To protect the attorney/client privilege and the effective right to counsel, there shall be no recording of conferences between attorneys and their clients or between counsel and the judge at the bench.

1:1-14.2 Expedition

(a) Hearings and other proceedings shall proceed with all reasonable expedition and, to the greatest extent possible, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded.

(b) The parties shall promptly advise the Clerk and the judge of any event which will probably delay the conduct of the case.

1:1-14.3 Interpreters; payment

(a) Except as provided in (d) below, any party at his or her own cost may obtain an interpreter if the judge determines that interpretation is necessary.

(b) Taking into consideration the complexity of the issues and communications involved, the judge may require that an interpreter be taken from an official registry of interpreters or otherwise be assured that the proposed interpreter can adequately aid and enable the witness in conveying information to the judge.

(c) 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.

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 shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

(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.

(c) If the judge receives an explanation:

1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or

2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, 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.

(d) If the appearing party requires an initial decision on the merits, 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.

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.

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.

1:1-14.7 Conduct of hearings

(a) The judge shall commence 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) 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, 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 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, 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. 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 or as otherwise directed by the judge.

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 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 and final 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 or to the Rutgers Camden Law School website at http://lawlibrary.rutgers.edu/oal. A copy of any cited decision shall be supplied if it is not located in any published compilation or on the foregoing website.

(g) A telephone hearing is begun by the judge placing a conference call on a designated date and time to the parties in the case. In all other respects, the procedures applicable to hearings shall apply.

1:1-14.8 Conduct of proceedings on the papers and telephone hearings

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

(b) A completed certification must be returned to the Clerk and served on the other party 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.

(c) Upon timely receipt of a completed certification, 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 record is closed when the Clerk assigns the record to a judge.

(d) If the party requesting the hearing does not appear at the scheduled in-person or telephone hearing and no certificate is timely received, the matter shall be handled as a failure to appear pursuant to N.J.A.C. 1:1-14.4.

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 proposed 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) 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.

(h) 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.

(i) Except as limited by (l) 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.

(j) 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 or 14.14 and 14.15 consisting of the assessment of costs, expenses, or fines;
5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3;
6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b); and
7. Appearance of attorneys pro hac vice pursuant to N.J.A.C. 1:1-5.2.

(k) Any request for interlocutory review of those matters specified in (j) above should be addressed to the Director of the Office of Administrative Law with a copy to the agency head who transmitted the case to the Office of Administrative Law. Review shall proceed in accordance with (b) through (g) above.

(l) Orders or rulings issued under (j)1, 2, 3, 5, 6 and 7 above may only be appealed interlocutorily; a party may not seek review of such orders or rulings after the judge renders the initial decision in the contested case.

1:1-14.11 Ordering a transcript; cost; certification to court; copying

(a) A transcript of any proceeding which has been sound recorded may be obtained by filing a request with the Clerk. The requesting party shall notify all other parties of the request. Unless the requesting party is the State or a political subdivision thereof, the request shall be accompanied by a

reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or $ 300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the preparer. The Clerk shall promptly arrange for the preparation of the transcript with a copy for the case file. Upon completion of the transcript, the preparer shall forward the transcript to the requesting party and the copy to the Clerk. The preparer shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.

(b) An unofficial copy of a sound recorded proceeding may be obtained by making a request to the Clerk accompanied by a blank standard cassette of appropriate length.

(c) A transcript of any stenographically recorded proceeding may be obtained by requesting the appropriate stenographic firm to prepare a transcript, except as specified in (d) below. The requesting party shall provide notice of the request to the Clerk and to all other parties. Unless the requesting party is the State or a political subdivision thereof, the stenographic firm may require a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or $ 300.00 for each day or fraction thereof of the proceeding. The reporter shall promptly prepare the transcript and shall file a copy with the Clerk at the time the original is delivered to the requesting party. The reporter shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.

(d) When the preparation of a transcript is being requested for an appeal to court, whether the proceeding was sound or stenographically recorded, the request shall be made as follows:

1. For cases heard by an Administrative Law Judge, the request shall be made to the Clerk of the Office of Administrative Law;

2. For cases heard by an agency head, the request shall be made to the Clerk of that agency.

(e) All transcript preparation requests pursuant to (d) above for appeal to a court shall include one copy of the transcript for the Clerk and any additional copies required by R. 2:6-12. The form of the transcript request shall conform with the requirements of R. 2:5-3(a) and be accompanied by the deposit required by R. 2:5-3(d).

1. The Clerk shall promptly arrange for the preparation of the transcript. Upon completion of the transcript, the preparer shall bill the requesting party for any sum due or shall reimburse the requesting party for any overpayment and shall forward the original and any copies ordered pursuant to R. 2:6-12 to the requesting party. When the last volume of the entire transcript has been delivered to the appellant, the preparer shall forward to the Clerk the copy of the transcript prepared for the Clerk.

2. The Clerk shall transmit the transcript copy to the court and comply with the requirements of R. 2:5-3.

(f) For cases in which an agency possesses a transcript of the hearing being appealed, the request for copying under R. 2:5-3(a) shall be made to the Clerk of that agency. Upon receiving such a request, the Clerk shall make the existing transcript available to the appellant for reproduction for filing and service.

(g) Any transcript that is required by law to be filed with a Clerk shall be considered a public document which is available upon request for copying, as required by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(h) The following shall apply to all transcripts:

1. Transcripts must be prepared in accordance with State standards established by the Administrative Director of the Courts.

2. Unless a proceeding has been sealed, any person may request a transcript or a recording of the proceeding. However, if the person requesting a transcript or tape recording was not a party to the proceeding, the requester, when making the request, must also notify all parties of the request. If a party objects to the request, a written objection must be filed immediately with the Clerk and served on the requester and all other parties to the proceeding. This objection shall be reviewed by the judge who presided over the proceeding.

3. If a proceeding was sealed, only parties to the proceeding may request a transcript or a tape recording and the contents of the transcript or recording shall not be disclosed to anyone except in accordance with the order sealing the proceeding.

(i) Any party or person entitled by Federal statute or regulation to copy and inspect the verbatim transcript may arrange with the Clerk to review any transcript filed under (a) or (c) above and shall also be permitted to hear and receive a copy of any sound recorded proceeding pursuant to (b) above. All applications to obtain a transcript of any proceeding at public expense for use on appeal shall be made to the Appellate Court pursuant to New Jersey Court Rule R. 2:5-3 or in case of Federal appeals pursuant to applicable Federal Court Rules.

(j) Where the Division of Ratepayer Advocate is representing public interest in a proceeding and another party to the proceeding is entitled by law to recover the costs thereof from others, such other party shall obtain, pay for and furnish to the Ratepayer Advocate upon request the official transcript.

1:1-14.12 Disqualification of judges

(a) A judge shall, on his or her own motion, withdraw from participation in any proceeding in which the judge's ability to provide a fair and impartial hearing might reasonably be questioned, including but not limited to instances where the judge:

1. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

2. Is by blood or marriage the second cousin of or is more closely related to any party to the proceeding or an officer, director or trustee of a party;

3. Is by blood or marriage the first cousin of or is more closely related to any attorney in the case. This proscription shall extend to partners, employers, employees or office associates of any such attorney;

4. Is by blood or marriage the second cousin of or is more closely related to a likely witness to the proceeding;

5. While in private practice served as attorney of record or counsel in the case or was associated with a lawyer who served during such association as attorney of record or counsel in the proceeding, or the judge or such lawyer has been a witness concerning the case;

6. Has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding;

7. Is interested, individually or as a fiduciary, or whose spouse or minor child residing in the same household is interested in the outcome of the proceeding; or

8. When there is any other reason which might preclude a fair and unbiased hearing and decision, or which might reasonably lead the parties or their representatives to believe so.

(b) A judge shall, as soon as practicable after assignment to a particular case, withdraw from participation in a proceeding whenever the judge finds that any of the criteria in (a)1 through 8 above apply. A judge may not avoid disqualification by disclosing on the record the basis for disqualification and securing the consent of the parties.

(c) Any party may, by motion, apply to a judge for his or her disqualification. Such motion must be accompanied by a statement of the reasons for such application and shall be filed as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist. In no event shall the judge enter any order, resolve any procedural matters or render any other determination until the motion for disqualification has been decided.

(d) Any request for interlocutory review of an administrative law judge's order under this section shall be made pursuant to N.J.A.C. 1:1-14.10(k) and (l).

1:1-14.13 Proceedings in the event of death, disability, departure from State employment, disqualification or other incapacity of judge

(a) If, by reason of death, disability, departure from State employment, disqualification or other incapacity, a judge is unable to continue presiding over a pending hearing or issue an initial decision after the conclusion of the hearing, a conference will be scheduled to determine if the parties can settle the matter or, if not, can reach agreement upon as many matters as possible.

(b) In the event settlement is not reached, another judge shall be assigned to complete the hearing or issue the initial decision as if he or she had presided over the hearing from its commencement, provided:

1. The judge is able to familiarize himself or herself with the proceedings and all testimony taken by reviewing the transcript, exhibits marked in evidence and any other materials which are contained in the record; and

2. The judge determines that the hearing can be completed with or without recalling witnesses without prejudice to the parties.

(c) In the event the hearing cannot be continued for any of the reasons enumerated in (b) above, a new hearing shall be ordered by the judge.

1:1-14.14 Sanctions; failure to comply with orders or requirements of this chapter

(a) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;

2. Suppress a defense or claim;

3. Exclude evidence;

4. Order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party; or

5. Take other appropriate case-related action.

1:1-14.15 Conduct obstructing or tending to obstruct the conduct of a contested case

(a) If any party, attorney, or other representative of a party, engages in any misconduct which, in the opinion of the judge, obstructs or tends to obstruct the conduct of a contested case, the party, attorney, or other representative may be fined in an amount which shall not exceed $ 1,000 for each instance.

(b) Where the conduct deemed to obstruct or tending to obstruct the conduct of a contested case occurs under circumstances which the judge personally observes and which he or she determines unmistakably demonstrates willfulness and requires immediate adjudication to permit the proceedings to continue in an orderly and proper manner:

1. The judge shall inform the party, attorney or other representative of the nature of the actions deemed obstructive and shall afford the party, attorney or other representative an immediate opportunity to explain the conduct; and

2. Where the judge determines, after providing the party, attorney or other representative, an opportunity to explain, that the conduct does constitute misconduct and that the conduct unmistakably demonstrates willfulness, the judge shall issue an order imposing sanctions.

i. The order imposing sanctions shall recite the facts and contain a certification by the judge that he or she personally observed the conduct in question and explain the conclusion that the party, attorney or other representative engaged in misconduct.

(c) Where the conduct deemed to obstruct or tending to obstruct a contested case did not occur in the presence of the judge or where the conduct does not require immediate adjudication to permit the proceedings to continue in an orderly and proper manner, the matter shall proceed by order to show cause specifying the acts or omissions alleged to be misconduct. The proceedings shall be captioned "In the Matter of _____, Charged with Misconduct."

(d) In any proceeding held pursuant to (c) above, the matter may be presented by a staff attorney of the Office of Administrative Law, or by the Attorney General. The designation shall be made by the Director of the Office of Administrative Law. The matter shall not be heard by the judge who instituted the proceeding if the appearance of objectivity requires a hearing by another judge.

SUBCHAPTER 15. EVIDENCE RULES

1:1-15.1 General rules

(a) Only evidence which is admitted by the judge and included in the record shall be considered.

(b) Evidence rulings shall be made to promote fundamental principles of fairness and justice and to aid in the ascertainment of truth.

(c) Parties in contested cases shall not be bound by statutory or common law rules of evidence or any formally adopted in the New Jersey Rules of Evidence except as specifically provided in these rules. All relevant evidence is admissible except as otherwise provided herein. A judge may, in his or her discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either:

1. Necessitate undue consumption of time; or

2. Create substantial danger of undue prejudice or confusion.

(d) If the judge finds at the hearing that there is no bona fide dispute between the parties as to any unstipulated material fact, such fact may be proved by any relevant evidence, and exclusionary rules shall not apply, except for (c) above or a valid claim of privilege.

(e) When the rules in this subchapter state that the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is subject to a condition, and the fulfillment of the condition is in issue, the judge shall hold a preliminary inquiry to determine the issue. The judge shall indicate which party has the burden of producing evidence and the burden of proof on such issue as implied by the rule under which the question arises. No evidence may be excluded in determining such issue except pursuant to the judge's discretion under (c) above or a valid claim of privilege. This provision shall not be construed to restrict or limit the right of a party to introduce evidence subsequently which is relevant to weight or credibility.

1:1-15.2 Official notice

(a) Official notice may be taken of judicially noticeable facts as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence.

(b) Official notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge.

(c) Parties must be notified of any material of which the judge intends to take official notice, including preliminary reports, staff memoranda or other noticeable data. The judge shall disclose the basis for taking official notice and give the parties a reasonable opportunity to contest the material so noticed.

1:1-15.3 Presumptions

No evidence offered to rebut a presumption may be excluded except pursuant to the judge's discretion under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege.

1:1-15.4 Privileges

The rules of privilege recognized by law or contained in the following New Jersey Rules of Evidence shall apply in contested cases to the extent permitted by the context and similarity of circumstances: N.J.R.E 501 (Privilege of Accused); N.J.R.E. 502 (Definition of Incrimination); N.J.R.E. 503 (Self-incrimination); N.J.R.E. 504 (Lawyer-Client Privilege); N.J.S.A. 45:14B-28 (Psychologist's Privilege); N.J.S.A. 2A:84-22.1 et seq. (Patient and Physician Privilege); N.J.S.A. 2A:84A-22.8 and N.J.S.A. 2A:84A-22.9 (Information and Data of Utilization Review Committees of Hospitals and Extended Care Facilities); N.J.S.A. 2A:84A-22.13 et seq. (Victim Counselor Privilege); N.J.R.E. 508 (Newsperson's Privilege); N.J.R.E. 509 (Marital Privilege-Confidential Communications); N.J.S.A. 45:8B-29 (Marriage Counselor Privilege); N.J.R.E. 511 (Cleric-Penitent Privilege); N.J.R.E. 512 and 610 (Religious Belief); N.J.R.E. 513 (Political Vote); N.J.R.E. 514 (Trade Secret); N.J.R.E. 515 (Official Information); N.J.R.E. 516 (Identity of Informer); N.J.R.E. 530 (Waiver of Privilege by Contract or Previous Disclosure; Limitations); N.J.R.E. 531 (Admissibility of Disclosure Wrongfully Compelled); N.J.R.E. 532 (Reference to Exercise of Privileges); and N.J.R.E. 533 (Effect of Error in Overruling Claim of Privilege).

1:1-15.5 Hearsay evidence; residuum rule

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

1:1-15.6 Authentication and content of writings

Any writing offered into evidence which has been disclosed to each other party at least 10 days prior to the hearing shall be presumed authentic. At the hearing any party may raise questions of authenticity. Where a genuine question of authenticity is raised the judge may require some authentication of the questioned document. For these purposes the judge may accept a submission of proof, in the form of an affidavit, certified document or other similar proof, no later than 10 days after the date of the hearing.

1:1-15.7 Exhibits

(a) The verbatim record of the proceedings shall include references to all exhibits and, as to each, the offering party, a brief description of the exhibit stated by the offering party or the judge, and the marking directed by the judge. The verbatim record shall also include a record of the exhibits retained by the judge at the end of the proceedings and of the disposition then made of the other exhibits.

(b) Parties shall provide each party to the case with a copy of any exhibit offered into evidence. Large exhibits that cannot be placed within the judge's file may be either photographed, attached to the file, or described in the record and committed to the safekeeping of a party. All other admitted exhibits shall be retained in the judge's file until certified to the agency head pursuant to N.J.A.C. 1:1-18.1.

(c) The standard marking for exhibits shall be:

1. P = petitioner;
2. R = respondent;
3. A = appellant;
4. J = joint;
5. C = judge;
6. I = intervenor; or
7. Such other additional markings required for clarity as the judge may direct.

1:1-15.8 Witnesses; requirements for testifying; testifying by telephone

(a) Except as otherwise provided by this subchapter, by statute or by rule establishing a privilege:

1. Every person is qualified to be a witness; and
2. No person has a privilege to refuse to be a witness; and
3. No person is disqualified to testify to any matter; and
4. No person has a privilege to refuse to disclose any matter or to produce any object or writing; and
5. No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing but the judge presiding at the hearing in a contested case may not testify as a witness.

(b) A person is disqualified to be a witness if the judge finds the proposed witness is incapable of expression concerning the matter so as to be understood by the judge directly or through interpretation by one who can understand the witness, or the proposed witness is manifestly incapable of understanding the duty of a witness to tell the truth. An interpreter is subject to all the provisions of these rules relating to witnesses.

(c) As a prerequisite for the testimony of a witness there must be evidence that the witness has personal knowledge of the matter, or has special experience, training or education, if such is required. Such evidence may be provided by the testimony of the witness. In exceptional circumstances, the judge may receive the testimony of a witness conditionally, subject to evidence of knowledge, experience, training or education being later supplied in the course of the proceedings. Personal knowledge may be obtained through hearsay.

(d) A witness may not testify without taking an oath or affirming to tell the truth under the penalty provided by law. No witness may be barred from testifying because of religion or lack of it.

(e) Testimony of a witness may be presented by telephone if, before the hearing begins, all parties agree and the judge finds there is good cause for permitting the witness to testify by telephone.

(f) Testimony of a witness may be given in narrative fashion rather than by question and answer format if the judge permits.

1:1-15.9 Expert and other opinion testimony

(a) If a witness is not testifying as an expert, testimony of that witness in the form of opinions or inferences is limited to such opinions or inferences as the judge finds:

1. May be rationally based on the perception of the witness; and
2. Are helpful to a clear understanding of the witness' testimony or to the fact in issue.

(b) If a witness is testifying as an expert, testimony of that witness in the form of opinions or inferences is admissible if such testimony will assist the judge to understand the evidence or determine a fact in issue and the judge finds the opinions or inferences are:

1. Based on facts and data perceived by or made known to the witness at or before the hearing; and
2. Within the scope of the special knowledge, skill, experience or training possessed by the witness.

(c) Testimony in the form of opinion or inferences which is otherwise admissible is not objectionable because it embraces the ultimate issue or issues to be decided by the judge.

(d) A witness may be required, before testifying in terms of opinions or inference, to be first examined concerning the data upon which the opinion or inference is based.

(e) Questions calling for the opinion of an expert witness need not be hypothetical in form unless, in the discretion of the judge, such form is required.

(f) If facts and data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, those facts and data upon which an expert witness bases opinion testimony need not be admissible in evidence.

1:1-15.10 Offers of settlement inadmissible

Offers of settlement, proposals of adjustment and proposed stipulations shall not constitute an admission and shall not be admissible.

1:1-15.11 Stipulations

The parties may by stipulation agree upon the facts or any portion thereof involved in any controversy. Such a stipulation shall be regarded as evidence and shall preclude the parties from thereafter challenging the facts agreed upon.

1:1-15.12 Prior transcribed testimony

(a) If there was a previous hearing in the same or a related matter which was electronically or stenographically recorded, a party may, unless the judge determines that it is necessary to evaluate credibility, offer the transcript of a witness in lieu of producing the witness at the hearing provided that the witness' testimony was taken under oath, all parties were present at the proceeding and were afforded a full opportunity to cross-examine the witness.

(b) A party who intends to offer a witness' transcribed testimony at the hearing must give all other parties and the judge at least 10 days notice prior to the commencement of the hearing of that intention and provide each with a copy of the transcript being offered.

(c) Opposing parties may subpoena the witness to appear personally. Any party may produce additional witnesses and other relevant evidence at the hearing.

(d) Provided the requirements in (a) above are satisfied, the entire controversy may be presented solely upon such transcribed testimony if all parties agree and the judge approves.

(e) Prior transcribed testimony that would be admissible as an exception to the hearsay rule under Evidence Rule 63(3) is not subject to the requirements of this section.

SUBCHAPTER 16. INTERVENTION AND PARTICIPATION

1:1-16.1 Who may apply to intervene; status of intervenor

(a) Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.

(b) Persons or entities permitted to intervene shall have all the rights and obligations of a party to the proceeding.

1:1-16.2 Time of motion

(a) A motion for leave to intervene may be filed at any time after a case is initiated.

(b) If made before a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the head of the agency having jurisdiction over the case. The agency head may rule upon the motion to intervene or may reserve decision for action by a judge after the case has been filed with the Office of Administrative Law.

(c) If made after a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the judge or, if the case has not yet been assigned to a judge, with the Clerk of the Office of Administrative Law.

1:1-16.3 Standards for intervention

(a) In ruling upon a motion to intervene, the judge shall take into consideration the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.

(b) In cases where one of the parties is a State agency authorized by law to represent the public interest in a case, no movant shall be denied intervention solely because the movant's interest may be represented in part by said State agency.

(c) Notwithstanding (a) above, persons statutorily permitted to intervene shall be granted intervention.

1:1-16.4 Notice of opportunity to intervene or participate

Where it appears to the judge that a full determination of a case may substantially, specifically and directly affect a person or entity who is not a party to the case, the judge, on motion of any party or on his or her own initiative, may order that the Clerk or any party notify the person or entity of the proceeding and of the opportunity to apply for intervention or participation pursuant to these rules.

1:1-16.5 Alternative treatment of motions to intervene

Every motion for leave to intervene shall be treated, in the alternative, as a motion for permission to participate.

1:1-16.6 Participation; standards for participation

(a) Any person or entity with a significant interest in the outcome of a case may move for permission to participate.

(b) A motion to participate may be made at such time and in such manner as is appropriate for a motion for leave to intervene pursuant to N.J.A.C. 1:1-16.2. In deciding whether to permit participation, the judge shall consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion.

(c) The judge shall determine the nature and extent of participation in the individual case. Participation shall be limited to:

1. The right to argue orally; or
2. The right to file a statement or brief; or
3. The right to file exceptions to the initial decision with the agency head; or
4. All of the above.

SUBCHAPTER 17. CONSOLIDATION OF TWO OR MORE CASES; MULTIPLE AGENCY JURISDICTION CLAIMS; DETERMINATIONS OF PREDOMINANT INTEREST

1:1-17.1 Motion to consolidate; when decided

(a) As soon as circumstances meriting such action are discovered, an agency head, any party or the judge may move to consolidate a case which has been transmitted to the Office of Administrative Law with any other contested case involving common questions of fact or law between identical parties or between any party to the filed case and any other person, entity or agency.

(b) This rule shall apply to cases:

1. Already filed with the Office of Administrative Law;
2. Commenced in an agency but not yet filed with the Office of Administrative Law; and
3. Commenced in an agency and not required to be filed with the Office of Administrative Law under N.J.S.A. 52:14F-8.

(c) The judge assigned to the case first transmitted to the Office of Administrative Law shall hear and rule upon the motion to consolidate.

(d) All motions to consolidate, including those involving predominant interest allegations, must be disposed of by interlocutory order prior to commencing the evidentiary hearing.

1:1-17.2 Form of motion; submission date

(a) A motion to consolidate shall address whether the matter should be consolidated considering the standards set forth in N.J.A.C. 1:1-17.3.

(b) Motions to consolidate cases which commenced in separate agencies and all replies thereto shall include a predominant interest allegation and shall be supported by a brief and affidavits. Copies of such motions and any responsive papers shall be filed with each agency if that agency is not party to the case.

(c) All consolidation motions involving cases commenced in two or more agencies shall be scheduled by the Office of Administrative Law for oral argument under N.J.A.C. 1:1-12.3.

(d) Motions for consolidation involving cases transmitted or to be transmitted to the Office of Administrative Law from a single agency shall be handled in accordance with N.J.A.C. 1:1-12.2.

1:1-17.3 Standards for consolidation

(a) In ruling upon a motion to consolidate, the judge shall consider:

1. The identity of parties in each of the matters;
2. The nature of all the questions of fact and law respectively involved;
3. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;
4. To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay or undue prejudice to any party;
5. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and
6. Other matters appropriate to a prompt and fair resolution of the issues, including whether a case still pending in an agency is contested or is ripe to be declared contested.

1:1-17.4 Review of orders to consolidate cases from a single agency

(a) Except as provided in (b) below, orders granting or denying the consolidation of cases commenced before a single State agency shall be subject to N.J.A.C. 1:1-14.10.

(b) An order consolidating any matter commenced before a single agency but not transmitted to the Office of Administrative Law shall be forwarded to the agency head for review.

1. The agency head's review of the judge's order shall be completed no later than 45 days from the entry of the judge's order, except when, for good cause shown and upon notice to all parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

1:1-17.5 Multiple agency jurisdiction claims; standards for determining predominant interest

(a) When a motion to consolidate pertains to contested cases filed with two or more State agencies which are asserting jurisdiction, the judge shall determine which agency, if any, has the predominant interest in the conduct and outcome of the matter. In determining this question, the following factors shall be weighed:

1. Whether more than one agency asserting jurisdiction over a common issue has jurisdiction over the issue, and if more than one agency has jurisdiction, whether the jurisdiction is mandatory for one of the agencies;
2. Whether the common issue before the two agencies is, for either agency, the sole, major or dominant issue in dispute and whether its determination would either serve to moot the remaining questions or to affect substantially their resolution;
3. Whether the allegations involve issues and interests which extend beyond the immediate parties and are of particular concern to one or the other agency;

4. Whether the claims, if ultimately vindicated, would require specialized or particularized remedial relief available in one agency but not the other;

5. Whether the common issue is clearly severable from the balance of the controversy and thus will permit non-duplicative factual and legal determinations by each agency.

1:1-17.6 Determination of motions involving consolidation of cases from multiple agencies; contents of order; exempt agency conduct

(a) In motions concerning multiple agencies, the judge shall initially determine the consolidation question. If consolidation is to be ordered, then a predominant interest determination must also be rendered in the consolidation order. If particular issues in the entire controversy are clearly severable, the judge's consolidation order shall specify which agency shall decide each such issue. Motions for consolidation involving predominant interest determinations must be decided within 45 days from the date of submission.

(b) If one agency is determined to have a predominant interest, that agency shall render the final decision on all issues within the scope of its predominant interest. The judge in the consolidation order shall specify the issues relating to the predominant issue and shall clearly identify the agency having the authority to issue a final decision on those issues.

(c) If there are requests for relief which may not be granted by the agency with the predominant interest, the judge shall in the consolidation order specify clearly which determinations by the agency with the predominant interest shall bind the agency subsequently considering any applications for relief.

(d) When an agency exempt under N.J.S.A. 52:14F-8(a) is determined to have a predominant interest in a contested case, the matter shall be heard by an administrative law judge unless the exempt agency decides, in its final order reviewing the judge's consolidation order to have the matter heard by its own personnel. If the exempt agency decides to have its own personnel hear the matter, but the hearer does not have jurisdiction over all issues within the scope of the agency's predominant interest, the hearer shall be designated a special administrative law judge as provided by N.J.S.A. 52:14F-6(b).

1:1-17.7 Review of orders involving consolidation of cases from multiple agencies

(a) All orders granting or denying consolidation of cases commenced before multiple agencies shall be forwarded by the Office of Administrative Law to the respective agency heads for their review.

(b) The agency head's review of the judge's order shall be completed no later than 45 days from the entry of the judge's order, except when, for good cause shown and upon notice to all parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(c) Agency heads considering a judge's consolidation order are encouraged to consult and coordinate with each other before issuing a final order.

1:1-17.8 Initial decision in cases involving a predominant interest; order of review; extension of time limits

(a) The judge in a consolidated case involving a predominant interest shall consider all the issues and arguments in the case and shall render a single initial decision in the form prescribed by N.J.A.C. 1:1-18, disposing of all the issues in controversy.

(b) The initial decision shall be filed first with the agency which has the predominant interest. After rendering its final decision, the agency with the predominant interest shall transmit the record, including the initial decision and its final decision, to the other agency which may subsequently render a final decision on any remaining issues and consider any specific remedies which may be within its statutory grant of authority.

(c) Upon transmitting the record, the agency with the predominant interest shall pursuant to N.J.A.C. 1:1-18.8 request an extension to permit the rendering of a final decision by the agency which does not have the predominant interest.

SUBCHAPTER 18. INITIAL DECISION; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS

1:1-18.1 Initial decision in contested cases

(a) When a case is not heard directly by an agency head, the judge shall issue an initial decision which shall be based exclusively on:

1. The testimony, documents and arguments accepted by the judge for consideration in rendering a decision;
2. Stipulations; and
3. Matters officially noticed.

(b) The initial decision shall be final in form and fully dispositive of all issues in the case.

(c) No substantive finding of fact or conclusion of law, nor any concluding order or other disposition shall be binding upon the agency head, unless otherwise provided by statute.

(d) All initial decisions shall be issued and received by the agency head no later than 45 days after the hearing is concluded unless an earlier time frame is mandated by Federal or State law.

(e) In mediations successfully concluded by initial decision, the decision shall be issued and received by the agency head as soon as practicable after the mediation, but in no event later than 45 days thereafter.

(f) Within 10 days after the initial decision is filed with the agency head, the Clerk shall certify the entire record with original exhibits to the agency head.

(g) Upon filing of an initial decision with the transmitting agency, the Office of Administrative Law relinquishes jurisdiction over the case, except for matters referred to in N.J.A.C. 1:1-3.2(c)1 through 5.

1:1-18.2 Oral initial decision

(a) The judge may render the initial decision orally in any case where the judge determines that the circumstances appropriately permit an oral decision and the questions of fact or law are sufficiently non-complex.

(b) The decision shall be issued, transcribed, filed with the agency head and mailed to the parties with an indication of the date of receipt by the agency head.

(c) In an oral decision, the judge shall identify the case, the parties, and the issue or issues to be decided and shall analyze the facts as they relate to the applicable law, and make findings of fact, conclusions of law and an appropriate order or disposition of the case. The decision shall include the statement at N.J.A.C. 1:1-18.3(c)12, and the judge shall explain to the parties that the decision is being forwarded to the agency head for disposition pursuant to N.J.S.A. 52:14B-10, and that exceptions may be addressed to the agency head. The judge need not specifically include in the oral decision the other material required by N.J.A.C. 1:1-18.3(c) as long as it is otherwise contained in the record.

1:1-18.3 Written initial decision

(a) If an oral decision is not issued, the judge shall issue a written initial decision.

(b) The written initial decision shall be filed with the agency head and shall be promptly served upon the parties with an indication of the date of receipt by the agency head.

(c) The written initial decision shall contain the following elements which may be combined and need not be separately discussed:

1. An appropriate caption;
2. The appearances of the parties and their representatives, if any;
3. A statement of the case;
4. A procedural history;
5. A statement of the issue(s);
6. A factual discussion;
7. Factual findings;
8. A legal discussion;
9. Conclusions of law;
10. A disposition;
11. A list of exhibits admitted into evidence; and
12. The following statement: "This recommended decision may be adopted, modified or rejected by (the head of the agency), who by law is empowered to make a final decision in this matter. However, if (the head of the agency) does not so act in 45 days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10."

1:1-18.4 Exceptions; replies

(a) Within 13 days from the date the judge's initial decision was mailed to the parties, any party may file written exceptions with the agency head. A copy of the exceptions shall be served on all

other parties and the judge. Exceptions to orders issued under N.J.A.C. 1:1-3.2(c)4 shall be filed with the Director of the Office of Administrative Law.

(b) The exceptions shall:

1. Specify the findings of fact, conclusions of law or dispositions to which exception is taken;

2. Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge;

3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon.

(c) Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions.

(d) Within five days from receipt of exceptions, any party may file a reply with the agency head, serving a copy thereof on all other parties and the judge. Such replies may address the issues raised in the exceptions filed by the other party or may include submissions in support of the initial decision.

(e) In all settlements, exceptions and cross-exceptions shall not be filed, unless permitted by the judge or agency head.

1:1-18.5 Motions to reconsider and reopen

(a) Motions to reconsider an initial decision are not permitted.

(b) Motions to reopen a hearing after an initial decision has been filed must be addressed to the agency head.

(c) Motions to reopen the record before an initial decision is filed must be addressed to the judge and may be granted only for extraordinary circumstances.

1:1-18.6 Final decision; stay of implementation

(a) Within 45 days after the receipt of the initial decision, or sooner if an earlier time frame is mandated by Federal or State law, the agency head may enter an order or a final decision adopting, rejecting or modifying the initial decision. Such an order or final decision shall be served upon the parties and the Clerk forthwith.

(b) The agency head may reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to issues of credibility of lay witness testimony, but shall clearly state the reasons for so doing. The order or final decision rejecting or modifying the initial decision shall state in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence at hearing and interpretation of law upon which it is based and precise changes in result or disposition caused by the rejection or modification.

(c) The agency head may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record.

(d) An order or final decision rejecting or modifying the findings of fact in an initial decision shall be based upon substantial evidence in the record and shall state with particularity the reasons

for rejecting the findings and shall make new or modified findings supported by sufficient, competent and credible evidence in the record.

(e) If an agency head does not reject or modify the initial decision within 45 days and unless the period is extended as provided by N.J.A.C. 1:1-18.8, the initial decision shall become a final decision.

(f) When a stay of the final decision is requested, the agency shall respond to the request within 10 days.

1:1-18.7 Remand; procedure

(a) An agency head may enter an order remanding a contested case to the Office of Administrative Law for further action on issues or arguments not previously raised or incompletely considered. The order of remand shall specifically state the reason and necessity for the remand and the issues or arguments to be considered. The remand order shall be attached to a N.J.A.C. 1:1-8.2 transmittal form and returned to the Clerk of the Office of Administrative Law along with the case record.

(b) The judge shall hear the remanded matter and render an initial decision.

1:1-18.8 Extentions of time limits

(a) Time limits for filing an initial decision, filing exceptions and replies and issuing a final decision may be extended for good cause.

(b) A request for extension of any time period must be submitted no later than the day on which that time period is to expire. This requirement may be waived only in case of emergency or other unforeseeable circumstances.

(c) Requests to extend the time limit for initial decisions shall be submitted in writing to the Director of the Office of Administrative Law. If the Director concurs in the request, he or she shall sign a proposed order no later than the date the time limit for the initial decision is due to expire and shall forward the proposed order to the transmitting agency head and serve copies on all parties. If the agency head approves the request, he or she shall within 10 days of receipt of the proposed order sign the proposed order and return it to the Director, who shall issue the order and cause it to be served on all parties.

(d) Requests to extend the time limit for exceptions and replies shall be submitted in writing 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. 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 ten days of receipt of the proposed order sign the proposed order and return it to the transmitting agency head, who shall 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, 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 for good cause shown.

SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS

1:1-19.1 Settlements

(a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, 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) Where the parties to a case wish to settle the matter and the transmitting agency is a party to the case, if the agency head has approved the terms of the settlement, either personally or through an authorized representative, 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.

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.

SUBCHAPTER 20. MEDIATION BY THE OFFICE OF ADMINISTRATIVE LAW

1:1-20.1 Scheduling of mediation

(a) Mediation may be scheduled, at the discretion of the Director, when requested by the transmitting agency, or by all parties to a hearing or when requested by an agency with regard to a matter which has not been transmitted as a contested case. Mediation shall not be scheduled in any matter where the transmitting agency has a mediation program available to the parties to the case.

(b) When a request for mediation is granted, 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.

1:1-20.2 Conduct of mediation

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

1. Discovery to prepare for mediation shall be permitted at the discretion of the judge.

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

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 or for return of the matter to the agency and, where appropriate, the mediator 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 or that the matter be returned to the agency.

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.

1:1-20.3 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. The initial decision shall be issued and received by the agency head as soon as practicable after the mediation, but in no event later than 45 days thereafter.

(c) If mediation does not result in agreement, the matter shall be returned to the Clerk for scheduling appropriate proceeding or for return to the transmitting agency.

SUBCHAPTER 21. UNCONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

1:1-21.1 Transmission to the Office of Administrative Law

(a) Any agency head may request under N.J.S.A. 52:14F-5(o) the assignment of an administrative law judge to conduct an uncontested case, including rule making and investigatory hearings. Public or investigatory hearings conducted pursuant to a rulemaking shall proceed in accordance with N.J.S.A. 52:14B-4(g). The agency head may make such a request by letter and by completing the applicable portions of an N.J.A.C. 1:1-8.2 transmittal form.

(b) The letter of request and transmittal form shall be filed with the Clerk of the Office of Administrative Law, together with any attachments, after all pleadings and notice requirements have been concluded.

1:1-21.2 Discovery

(a) Unless other discovery arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, discovery in uncontested cases shall consist of the following:

1. If an agency or a county/local governmental entity is a party to an uncontested case hearing, and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's relevant file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for a reasonable copying charge. The agency or county/local entity may refuse to disclose any document subject to a bona fide claim of privilege.

2. If the subject of an uncontested case hearing is not a county/local entity's or agency's action, proposed action or refusal to act, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least 10 days prior to the hearing, unless the judge determines that the information could not reasonably have been disclosed within that time.

(b) Any discovery other than that permitted in (a)1 and 2 above shall be by motion to the judge and for good cause shown.

1:1-21.3 Representation

In uncontested cases conducted by the Office of Administrative Law, representation shall not be regulated by N.J.A.C. 1:1-5.

1:1-21.4 Conduct of uncontested cases

(a) Unless other arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, uncontested cases shall proceed in the following manner:

1. Uncontested cases shall begin with the judge reading the case title and the docket number, asking the representatives or parties present to state their names for the record and stating 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.
2. In a sequence determined by the judge, each party to the proceeding shall be permitted to make a presentation setting forth the factual and/or legal basis for its position. When the parties are disputing the facts, the judge shall administer an oath to any party who wishes to make a presentation. The judge may also permit the parties to ask questions, either at the conclusion of each presentation or at the conclusion of all presentations, in the manner and to the extent that he or she determines most suitable.
3. Subject to a bona fide claim of privilege, documents or other tangible items or the written statements of an individual may be entered into the record if they are helpful to an understanding of the situation.
4. No rules of evidence apply to these proceedings.
5. Proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions may be submitted prior to the beginning of the hearing. Such documents may not be accepted thereafter, nor required of the parties at any time unless all parties agree to provide such submissions and the time for issuing the judge's report is not extended.
6. The proceeding shall be deemed concluded on the date the judge determines that no further presentations under (a)2 above shall be necessary.

1:1-21.5 Report

(a) In uncontested cases, the judge shall issue a report to the transmitting agency head which shall deal with each issue presented. The report shall explain the subject matter of the proceeding and the position of each party, shall recommend a course of action and shall set forth the factual or legal basis for the recommendation.

(b) The report may be rendered in writing or orally on the record at the hearing before the parties. If the report is rendered orally, it shall be transcribed and filed with the agency head and mailed to the parties.

(c) The report shall be issued within 45 days after the hearing is concluded unless expedition is required.

1:1-21.6 Extensions

Requests for an extension of any time limit associated with an uncontested case shall be taken to the transmitting agency head.

APPENDIX

CODE OF JUDICIAL CONDUCT FOR ADMINISTRATIVE LAW JUDGES PREAMBLE

The Code of Judicial Conduct for Administrative Law Judges is intended to establish basic ethical conduct standards for administrative law judges. The Code is intended to govern the conduct of these administrative law judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the Model Code of Judicial Conduct as adopted by the ABA on August 7, 1990 and the New Jersey Code of Judicial Conduct.

The text of the Canons is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. The Code is designed to provide guidance to administrative law judges and to provide a structure for regulating conduct.

CANON 1
AN ADMINISTRATIVE LAW JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE ADMINISTRATIVE JUDICIARY

An independent and honorable administrative judiciary is indispensable to justice in our society. An administrative law judge should participate in establishing, maintaining, and enforcing, high standards of conduct, and shall personally observe those standards so that the integrity and independence of the administrative judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary: Deference to the judgments and rulings of administrative proceedings depends upon public confidence in the integrity and independence of administrative law judges. The integrity and independence of administrative law judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including

the provisions of this Code. Public confidence in the impartiality of the administrative judiciary is maintained by the adherence of each administrative law judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the administrative judiciary and thereby does injury to the system of government under law.

CANON 2
AN ADMINISTRATIVE LAW JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. An administrative law judge shall respect and comply with the law and at all times shall act in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

Commentary: Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by judges. An administrative law judge must avoid all impropriety and appearance of impropriety. An administrative law judge must expect to be the subject of constant public scrutiny. An administrative law judge must therefore expect, and accept restrictions on the administrative law judge's conduct that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by administrative law judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the administrative law judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

See also Commentary under Canon 2C.

B. An administrative law judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. An administrative law judge shall not lend the prestige of the office to advance the private interests of the administrative law judge or others; nor shall an administrative law judge convey or permit others to convey the impression that they are in a special position to influence the judge. An administrative law judge shall not testify voluntarily as a character witness.

Commentary: Maintaining the prestige of the administrative judiciary is essential to a system of government in which the administrative judiciary must to the maximum extent possible, function independently of the executive and legislative branches. Respect for the office facilitates the orderly conduct of legitimate administrative judicial functions. Administrative law judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for an administrative law judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, official letterhead must not be used for conducting an administrative law judge's personal business.

An administrative law judge must avoid lending the prestige of the office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family.

Although an administrative law judge should be sensitive to possible abuse of the prestige of the office, an administrative law judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

An administrative law judge must not testify voluntarily as a character witness because to do so may lend the prestige of the office in support of the party for whom the administrative law judge testifies. Moreover, when an administrative law judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. An administrative law judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, an administrative law judge should discourage a party from requiring the judge to testify as a character witness.

C. An administrative law judge shall not hold membership in any organization that practices invidious discrimination as defined by Federal law and the New Jersey Law Against Discrimination.

Commentary: It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination. Membership of an administrative law judge in an organization that practices invidious discrimination may give rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as, that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of categories prohibited by Federal law or the New Jersey Law Against Discrimination persons who would otherwise be admitted to membership. See New York State Club Ass'n Inc. v. City of New York, 487 U.S. 1, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984).

Although Canon 2C relates only to membership in organizations that invidiously discriminate, in addition, it would be a violation of Canon 2 and Canon 2A for an administrative law judge to arrange a meeting at a club that the judge knows practices invidious discrimination, or for the judge to regularly use such a club. Moreover, public manifestation by an administrative law judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the administrative judiciary, in violation of Canon 2A.

When a person who is an administrative law judge at the time this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2 and Canon 2A, the administrative law judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but the judge is required to suspend participation in any activities of the organization. If the organization fails to discontinue its

invidiously discriminatory practices as promptly as possible, the administrative law judge is required to resign immediately from the organization.

CANON 3
AN ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of an administrative law judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative responsibilities:

(1) An administrative law judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) An administrative law judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(3) An administrative law judge shall maintain order and decorum in proceedings before the judge.

(4) An administrative law judge shall be patient, dignified, and courteous to litigants, witnesses, attorneys, representatives, and others with whom the judge deals in an official capacity, and shall require similar conduct of attorneys, representatives, staff members, and others subject to the judge's direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the judge. Judges can be efficient and businesslike while being patient and deliberate.

(5) An administrative law judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff and others subject to the judge's direction and control to do so.

Commentary: A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, the media, and others an appearance of bias. A judge must be alert to avoid behavior that may be perceived as prejudice.

(6) An administrative law judge shall accord to all persons who are legally interested in a proceeding, or their representative, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications as to substantive matters concerning a pending or impending proceeding. On notice, a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge, by amicus curiae or as otherwise authorized by law, if the judge affords the parties reasonable opportunity to respond. A judge may with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge. A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding except as authorized by law, but does not preclude a judge from consulting with other judges or subordinate personnel whose function is to aid the judges in carrying out adjudicative responsibilities. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

(7) An administrative law judge shall dispose of all judicial matters promptly, efficiently, and fairly.

Commentary: In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Prompt disposition of the judge's business requires a judge to devote adequate time to his or her duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that other subordinate officials, litigants, and their representatives cooperate with the judge to that end.

(8) An administrative law judge shall abstain from public comment about a pending or impending proceeding in any court or tribunal and shall require similar abstention on the part of personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the hearing procedures of agencies.

Commentary: "Agency personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by rules of professional conduct. This subsection is not intended to preclude participation in an association of judges merely because such association makes public comments about a pending or impending proceeding in the administrative process. The subsection is directed primarily at public comments by a judge concerning a proceeding before another judge.

(9) An administrative law judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

B. Administrative responsibilities:

(1) An administrative law judge shall diligently discharge assigned administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other administrative law judges.

(2) An administrative law judge shall require staff and other persons subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) An administrative law judge shall initiate appropriate disciplinary measures against a judge or a lawyer for unprofessional conduct of which the judge may become aware.

Commentary: Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body. Internal agency procedure which routes the complaint should be utilized; however, the judge remains responsible for initiation of the action.

C. Disqualification:

(1) An administrative law judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary: By decisional law, the rule of necessity may supersede the rule of disqualification. For example, a judge might be the only judge available in a matter requiring immediate judicial

action. The judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) in private practice the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

Commentary: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) the judge knows that he or she, individually or as a fiduciary, or his or her spouse or child residing in the judge's household, or any other member of the judge's family or a person treated by the judge as a member of the judge's family residing in the judge's household, has a more than de minimis financial interest in the subject matter in controversy or is a party to the proceeding, or any other more than de minimis interest that could be substantially affected by the outcome of the proceeding; generally, receiving service from a particular public utility is a de minimis interest;

(e) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as, or is in the employ of or associated in the practice of law with, a lawyer or other representative in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated of itself disqualifies the judge.

(iii) is known by the judge to have a more than de minimis interest that could be affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a witness in the proceeding.

(2) A judge shall inform himself or herself about the judge's personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the judge's household.

(3) For the purposes of this Code the following words or phrases shall have the meaning indicated:

(a) The degree of relationship is calculated according to the common law;

Commentary: According to the common law, the third degree of relationship test would, for example, disqualify the judge if the judge's or his or her spouse's parent, grandparent, uncle or aunt, brother or sister, cousin, niece or her husband, or nephew or his wife were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a more than de minimis legal or equitable interest, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

(v) ownership of one share of stock is more than a de minimis interest.

(d) "proceeding" includes prehearing or other stages of litigation.

CANON 4

AN ADMINISTRATIVE LAW JUDGE SHALL REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES

A. Extra-judicial activities in general:

An administrative law judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

B. Avocational activities:

An administrative law judge may speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including the revision of substantive and procedural law. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

C. Governmental, civic, and charitable activities:

(1) An administrative law judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interest.

Commentary: The judge has a professional obligation to avoid improper influence.

(2) An administrative law judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

Commentary: Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice. The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the judge from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the administrative judiciary.

(3) An administrative law judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(a) A judge shall not serve as an officer, director, trustee, or non-legal advisor if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court or tribunal.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to reexamine regularly the activities of each organization with which he or she is affiliated to determine if it is proper to continue his or her relationship with that organization.

(b) An administrative law judge as an officer, director, trustee or non-legal advisor, or as a member, or otherwise:

(i) may assist such an organization in planning fund-raising, but shall not personally participate in the solicitation of funds or other fund-raising activities; however, this shall not prohibit de minimis fund-raising activities within the confines of the OAL and its employees for non-profit charitable organizations with which judges or their immediate families are associated;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Canon 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Commentary: An administrative law judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by

telephone except in the following cases: (1) a judge may conduct de minimis fund-raising activities within the confines of the OAL and its employees for non-profit charitable organizations with which judges or their immediate families are associated, (2) a judge may solicit other judges for membership in the organizations described above and other persons if neither those persons nor persons with whom they are affiliated are likely ever to appear before the Office of Administrative Law, and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for membership solicitation does not violate Canon 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

D. Financial activities:

(1) An administrative law judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in transactions or continuing business relationships with lawyers or other persons likely to come before the Office of Administrative Law.

Commentary: A judge may avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges in the Office of Administrative Law. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or involve those family members in frequent transactions or continuing business relationships with persons likely to come before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

(2) An administrative law judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate.

(3) An administrative law judge shall not serve as an officer, director, manager, advisor, or employee of any business entity.

(4) An administrative law judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) Neither an administrative law judge, nor a member of the judge's family or a person treated by the judge as a member of the judge's family residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except for:

Commentary: Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

Commentary: A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required.

(e) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not administrative law judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria to other applicants; or

(h) any other gift, bequest, favor, or loan only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

Commentary: Canon 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

(6) An administrative law judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon and Canon 3. The Director of the Office of Administrative Law is required to disclose such information pursuant to the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12.

E. Fiduciary activities:

(1) An administrative law judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) An administrative law judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the Office of Administrative Law.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

Commentary: The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Canon 4D(4).

F. Practice of law:

A full-time administrative law judge shall not practice law, with or without compensation.

Commentary: This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

This provision will not be interpreted to prohibit a judge from giving legal advice to and assisting in the drafting or reviewing of documents for a member of the judge's family, so long as the judge receives no compensation. A member of the judge's family denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

G. Compensation and reimbursement:

An administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code to the extent permitted by law.

CANON 5

AN ADMINISTRATIVE LAW JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY

A. An administrative law judge shall not:

(1) act as a leader or hold an office in a political organization;

(2) publicly endorse or publicly oppose any candidate for public office;

(3) make speeches on behalf of a political organization;

(4) attend political functions or functions that are likely to be considered as being political in nature;

(5) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions; or

(6) otherwise engage in any political activity except as authorized under this Code.

Commentary: An administrative law judge retains the right to participate in the political process as a voter. Canon 5A(2) does not prohibit an administrative law judge from privately expressing his or her views on candidates for public office.

B. A candidate for reappointment to an administrative law judge position or an administrative law judge seeking another governmental office shall not engage in any political activity to secure the appointment except that such persons may:

(1) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(2) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Canon 5B(1); and

(3) provide to those specified in this Canon information as to his or her qualifications for the office.

C. An administrative law judge shall resign from office when the judge becomes a candidate either in a party primary or in a general election for an elective public office.

CHAPTER 6A. SPECIAL EDUCATION PROGRAM
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. APPLICABILITY

1:6A-1.1. Applicability

(a) The rules in this chapter shall apply to the notice and hearing of matters arising out of the Special Education Program of the Department of Education, pursuant to N.J.A.C. 6A:14. Any aspect of notice and 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 rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, at 20 U.S.C.A. 1415 et seq. and 34 CFR 300 et seq. These rules do not duplicate each provision of Federal law, but highlight some of the key Federal provisions which form the source or authority for these rules. Where appropriate, the Federal source or authority for a rule or Federal elaboration of a rule will be indicated in brackets following the rule. In any case where these rules could be construed as conflicting with Federal requirements, the Federal requirements shall apply.

(c) Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided herein or pursuant to Federal law.

SUBCHAPTERS 2 THROUGH 3. (RESERVED)

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:6A-4.1. Mediation by the Department of Education

(a) Upon receipt of a hearing request, the Department of Education shall promptly contact the parties to offer mediation.

1. If both parties consent to mediation, a mediation conference shall be held within 10 days of the hearing request.

2. If mediation is declined by either party, the Department of Education shall immediately transmit the matter with the transmittal form to the Office of Administrative Law. Copies of the transmittal form shall be sent to the parties.

(b) If the mediation conference results in a settlement, the terms shall be reduced to writing and signed by the parties and the representative of the Department of Education.

(c) If the mediation conference does not result in a settlement, the Department of Education representative shall immediately transmit the matter with the transmittal form to the Office of Administrative Law. Copies of the transmittal form shall be sent to the parties.

(d) The Department of Education shall transmit any unsettled jurisdictional matters, notice problems, or other preliminary motions from the parties to the assigned judge prior to the scheduled hearing date. Parties shall file any motions or other documents with the assigned judge.

(e) An administrative law judge may grant an adjournment of the mediation conference upon the written consent of both parties to an extension of the deadline for decision.

1:6A-4.2 (Reserved)

1:6A-4.3 Ongoing settlement efforts

(a) The scheduling of a hearing shall not preclude voluntary ongoing efforts by the parties to settle the matter before or at the hearing.

(b) Any ongoing settlement efforts by the parties shall not delay, interfere with, or otherwise impede a request for a hearing or the progress thereof, nor be grounds for adjournment of a hearing, unless a party requests an adjournment and the judge approves the adjournment to a specific date. Any such adjournment shall extend the deadline for decision, as established in N.J.A.C. 1:6A-18.1, Deadline for decision, by an amount of time equal to the adjournment.

SUBCHAPTER 5. REPRESENTATION

1:6A-5.1 Representation

(a) At a hearing, any party may be represented by legal counsel or accompanied and advised by individuals with special knowledge or training with respect to handicapped pupils and their educational needs, or both. Parents and children may be represented by individuals with special knowledge or training with respect to handicapped pupils and their educational needs.

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-5.4 and shall be bound by the approval procedures, limitations and practice requirements contained in N.J.A.C. 1:1-5.5.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:6A-9.1. Scheduling of hearing by Office of Administrative Law

(a) At the conclusion of an unsuccessful mediation conference or when mediation is not scheduled, the representative of the Office of Special Education Programs shall telephone the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall, to the greatest extent possible, be convenient to all parties but shall be approximately 10 days from the date of the scheduling call.

(b) The Office of Special Education Programs shall immediately transmit the matter to the Office of Administrative Law with the transmittal form. Copies of any motions or other documents shall be filed subsequently with the assigned judge.

1:6A-9.2. Adjournments

(a) The judge may grant an adjournment of the hearing at the request of either party. Any adjournment shall be for a specific period of time. When an adjournment is granted, the deadline for decision will be extended by an amount of time equal to the adjournment.

(b) No adjournment or delay in the scheduling of the hearing shall occur except at the request of a party.

(c) If the first scheduled date for hearing is adjourned, a conference shall be conducted on or about the originally scheduled hearing date regarding the status of the case and to determine hearings dates.

(d) A hearing scheduled pursuant to (c) above shall not be adjourned except in extraordinary circumstances.

SUBCHAPTER 10. DISCOVERY

1:6A-10.1 Discovery

(a) All discovery shall be completed no later than five business days before the date of the hearing.

(b) Each party shall disclose to the other party any documentary evidence and summaries of testimony intended to be introduced at the hearing.

(c) Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(d) Discovery shall, to the greatest extent possible, consist of the informal exchange of questions and answers and other information. Discovery may not include requests for formal interrogatories, formal admissions or depositions.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:6A-12.1. Emergency relief pending settlement or decision

(a) As part of a hearing request, or at any time after a hearing is requested, the affected parent(s), guardian, board or public agency may apply in writing for emergency relief pending a settlement or decision on the matter. An emergency relief application shall set forth the specific relief sought and the specific circumstances which the applicant contends justifies under (e) below the relief sought. Each application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

(b) Prior to the transmittal of the hearing request to the Office of Administrative Law, applications for emergency relief shall be addressed to the State Director of the Office of Special Education Programs, with a copy to the other party. The Department shall forward to the Office of Administrative Law by the end of the next business day all emergency relief applications that meet the procedural requirements in (a) above and which set forth on the face of the application and affidavits circumstances which would justify emergency relief under this section. Emergency relief applications which show no right to emergency relief or fail to comply with the procedural requirements above shall be processed by the Department in accordance with N.J.A.C. 1:6A-4.1.

(c) After transmittal, applications for emergency relief must be made to the Office of Administrative Law, with a copy to the other party.

(d) The Office of Administrative Law shall schedule an emergency relief application hearing on the earliest date possible and shall notify all parties of this date. Except for extraordinary circumstances established by good cause, no adjournments shall be granted but the opponent to an emergency relief application may be heard by telephone on the date of the emergency relief hearing. If emergency relief is granted without all parties being heard, provision shall be made in the order for the absent parties to move for dissolution or modification on two days' notice. Such an order, granted without all parties being heard, may also provide for a continuation of the order up to 10 days.

(e) At the emergency relief hearing, the judge may allow the affidavits to be supplemented by testimony and/or oral argument. The judge may order emergency relief pending issuance of the decision in the matter or, for those issues specified in N.J.A.C. 1:6A-14.2(a), may order a change in the placement of a student to an interim alternative educational setting for not more than 45 days in accordance with 20 U.S.C. § 1415(k)(2), if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(f) Judges may decide emergency relief applications orally on the record and may direct the prevailing party to prepare an order embodying the decision. If so directed, the prevailing party shall promptly mail the order to the judge and shall mail copies to every other party in the case. Unless a party notifies the judge and the prevailing party of his or her specific objections to the order within five days after such service, the judge may sign the order.

(g) After granting or denying the requested relief, the judge shall either return the parties to the Department of Education for a mediation conference under N.J.A.C. 1:6A-4.1 if both parties consent to mediation or schedule hearing dates.

SUBCHAPTER 13. PREHEARING CONFERENCES

1:6A-13.1. Prehearing conferences

Prehearing conferences may be scheduled in special education hearings.

SUBCHAPTER 14. CONDUCT OF CASES

1:6A-14.1 Procedures for hearing

(a) To the greatest extent possible, the hearing shall be conducted at a time and place convenient to the parent(s) or guardian.

(b) At the hearing, parents shall have the right to open the hearing to the public, and to have the child who is the subject of the hearing present.

(c) A verbatim record shall be made of the hearing.

(d) The judge's decision shall be based on the preponderance of the credible evidence, and the proposed action of the board of education or public agency shall not be accorded any presumption of correctness.

1:6A-14.2 Expedited hearings

(a) An expedited hearing shall be scheduled:

1. At the request of a board of education or public agency if the board of education or public agency maintains that it is dangerous for the child to be in the current placement during the pendency of due process proceedings; or

2. At the request of a parent if:

i. The parent disagrees with the determination that the pupil's behavior in violating school rules was not a manifestation of the pupil's disability; or

ii. The parent disagrees with an order of school personnel removing a pupil with a disability from the pupil's current placement for more than 10 days or a series of removals that constitute a change in placement pursuant to 34 CFR 300.519 for a violation of school rules.

(b) Upon receipt of a request for an expedited hearing that meets the requirements of (a) above, the representative of the Department of Education shall, through telephone conference call to the parties and to the Clerk:

1. Determine whether both parties request mediation;

2. If both parties request mediation, schedule the dates for the mediation and for the hearing; and

3. If mediation is not requested, schedule dates for the hearing.

(c) The hearing date for the expedited hearing shall be no later than 10 days from the date of the hearing request. If both parties cannot agree to a hearing date within 10 days of the hearing request, a date shall be assigned by the Clerk within the required timelines.

(d) In an expedited hearing:

1. Responses to requests for discovery pursuant to N.J.A.C. 1:6A-10.1 shall be completed no later than two business days before the hearing. Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least two business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

2. A written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 45 days from the date of the hearing request. The time for issuance of an initial decision shall not be extended.

(e) In an expedited hearing pursuant to (a)1 and 2ii above, the judge may order placement of the pupil in an appropriate interim alternative educational setting if the judge:

1. Considers the appropriateness of the child's current placement;

2. Considers whether the board of education or public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services;

3. Determines that the board of education or public agency has demonstrated by substantial evidence, that is, beyond a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; and

4. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher will enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP and includes services and modifications to address the behavior and that are designed to prevent the behavior from recurring.

(f) In an expedited hearing pursuant to (a)2 above, the judge shall determine whether the board of education or public agency has demonstrated that the pupil's behavior was not a manifestation of the pupil's disability.

(g) Placement in an interim alternative placement may not be longer than 45 days. The procedures set forth in this section for such placement may be repeated as necessary.

1:6A-14.3 Interpreters

Where necessary, the judge may require the Department of Education to provide an interpreter at the hearing or written translation of the hearing, or both, at no cost to the parent(s) or guardian.

1:6A-14.4. Independent educational evaluation

(a) For good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil. The evaluation shall be conducted in accordance with N.J.A.C. 6A:14 by an appropriately certified or licensed professional examiner(s) who is not employed by and does not routinely provide evaluations for the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The judge shall order the board of education or public agency to pay for the independent educational evaluation at no cost to the parent(s) or guardian, (34 C.F.R. 300.503)

(b) Where an independent educational evaluation is ordered, the judge upon the request of a party may adjourn the hearing for a specified period of time and the deadline for decision, as established in N.J.A.C. 1:6A-18.1, will be extended by an amount of time equal to the adjournment.

1:6A-14.5 Transcripts

(a) In addition to any stenographic recording, each hearing shall be sound recorded by tape recording. A parent may receive a copy of the tape recording at no cost by making a request to the Clerk.

(b) Transcripts of any hearing may be obtained pursuant to 20 U.S.C. § 1415(h)(3) by contacting the Office of Special Education Programs.

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

SUBCHAPTER 18. DECISION AND APPEAL

1:6A-18.1 Deadline for decision

Subject to any adjournments pursuant to N.J.A.C. 1:6A-9.2, a written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 45 days from the date of the hearing request.

1:6A-18.2 Confidentiality

(a) In a written decision, the judge shall use initials rather than full names when referring to the child and the parent(s) or guardian, and may take other necessary and appropriate steps, in order to preserve their interest in privacy.

(b) Records of special education hearings shall be maintained in confidence pursuant to Federal regulations, 34 CFR 300.500 et seq. at the Office of Special Education Programs.

1:6A-18.3 Appeal, use of hearing record, obtaining copy of record, and contents of record

(a) Any party may appeal the decision of the judge either to the Superior Court of New Jersey, pursuant to the Rules Governing the Courts of the State of New Jersey, or to a district court of the United States, pursuant to 20 U.S.C.A. § 1415(i)(2).

(b) A party intending to appeal the administrative law judge's decision or an authorized representative is permitted to use, or may request a certified copy of, any portion or all of the original record of the administrative proceeding, provided a copy remains on file at the Office of Special Education Programs. The requesting party shall bear the cost of any necessary reproduction, provided, however, that requesting parents shall not be charged or assessed costs. Written requests for this material should be directed to the Office of Special Education Programs.

(c) The record shall consist of all documents transmitted by the Department of Education to the Office of Administrative Law; correspondence; any documents relating to motions; briefs; exhibits; transcripts, if any; the administrative law judge's decision; and any other material specifically incorporated into the record by the judge.

1:6A-18.4. Stay of implementation

(a) Unless the parties otherwise agree or the judge orders pursuant to N.J.A.C. 1:6A-12.1 or 14.2, the educational placement of the pupil shall not be changed prior to the issuance of the decision in the case, pursuant to 34 C.F.R. 300.514.

(b) Where a party appeals any portion of the decision not involving a change in the pupil's educational placement, and upon request by any party, the judge may stay implementation of the decision if immediate implementation would be likely to result in serious harm to the pupil or other pupils in the event that the decision is rejected or modified upon appeal.

1:6A-18.5 (Reserved)

CHAPTER 6B. DEPARTMENT OF EDUCATION TENURE HEARINGS CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. APPLICABILITY

1:6B-1.1 Applicability

The rules in this chapter shall apply to any hearings arising under the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10 et seq., except those cases in which criminal charges are also filed. The rules in this chapter implement the provisions of P.L. 1998, c.42. Any aspect of the hearing not covered by these special 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 rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTERS 2 THROUGH 3. (RESERVED)

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:6B-4.1 Notice of referral

(a) Pursuant to N.J.S.A. 18A:6-16, when the Commissioner of Education (Commissioner) or the person appointed to act in the Commissioner's behalf determines that a charge is sufficient to warrant dismissal or reduction in salary of the charged individual, the matter shall be referred for determination to the Office of Administrative Law within 10 days, except that the Commissioner may retain a matter for purposes of determining a summary decision motion made prior to referral.

(b) On the same date as the transmittal of the matter to the Office of Administrative Law, the Commissioner shall issue a notice of referral to the parties to the matter.

SUBCHAPTERS 5 THROUGH 8. (RESERVED)

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

1:6B-9.1 Scheduling of proceedings

The hearing shall be held within 30 days after the end of the discovery period.

SUBCHAPTER 10. DISCOVERY

1:6B-10.1 Discovery

(a) The parties shall commence discovery immediately upon receipt of the notice of referral.

(b) A party may notify another party to provide discovery by one or more of the following methods: written interrogatories; production of documents or things; permission to enter upon land or other property for inspection or other purposes; and requests for admissions. These discovery

requests shall be initiated by transmitting the request to the receiving party within 30 days of receipt of the notice of referral.

(c) Answers to discovery requests shall be made within 30 days of receipt of the request.

(d) Depositions upon oral examination or written questions and physical and mental examinations are available only upon motion for good cause or upon consent of the parties. A motion for additional discovery shall be filed with the administrative law judge no later than 10 days after the due date for filing of answers to discovery available pursuant to (b) above.

(e) Additional discovery must be completed within 30 days of receipt of an order granting the motion or, if upon the consent of the parties, no later than 30 days from the due date of answers to initial discovery requests.

(f) The judge may extend the discovery period for no more than 30 days due to disputes over sufficiency, completion, or other just cause.

SUBCHAPTERS 11 THROUGH 12. (RESERVED)

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

1:6B-13.1 Prehearing conferences

A prehearing conference shall be held within 30 days of referral of the case to the Office of Administrative Law.

SUBCHAPTER 14. CONDUCT OF CASES

1:6B-14.1 Ordering a transcript

Any party requesting a transcript shall file the request within 24 hours of the conclusion of the hearing. Failure to timely request a transcript shall not result in an extension of the time for filing of briefs.

1:6B-14.2 Filing of briefs

(a) Briefs shall be filed with the judge within 30 days of conclusion of the hearing, except in cases where a transcript has been ordered.

(b) In matters where a transcript has been ordered, briefs shall be filed with the judge within 30 days of receipt of the transcript by the parties, but in no event later than 45 days after conclusion of the hearing.

CHAPTER 6C. DEPARTMENT OF EDUCATION SCHOOL ETHICS COMMISSION HEARINGS CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. APPLICABILITY

1:6C-1.1 Applicability

The rules in this chapter shall apply to any hearings arising under the School Ethics Act, N.J.S.A. 18A:12-21 et seq., and are established in implementation of the hearing procedures of that Act. Any aspect of the hearing not covered by these special 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 rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. DEFINITIONS

1:6C-2.1 "Agency head" defined

As used in this chapter, "agency head" means the School Ethics Commission with regard to the issue of whether conduct constitutes a violation of the School Ethics Act, and means the Commissioner of Education with regard to the imposition of penalty in those matters where the Commission has determined that a violation occurred.

SUBCHAPTERS 3 THROUGH 17. (RESERVED)

SUBCHAPTER 18. INITIAL DECISION; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS

1:6C-18.1 Initial decision

(a) The initial decision shall include a determination as to whether the charged individual violated the School Ethics Act, and if so, the appropriate penalty for the violation.

(b) The written initial decision shall include the following statement:

"I hereby FILE my initial decision with the SCHOOL ETHICS COMMISSION and with the COMMISSIONER OF EDUCATION. Pursuant to N.J.S.A. 18A:12-29, the School Ethics Commission has jurisdiction to determine whether a violation of the School Ethics Act occurred. If it concludes that the conduct constitutes a violation of the School Ethics Act, it shall recommend an appropriate penalty to the Commissioner of Education. The Commissioner of Education shall issue the final decision with respect to penalty in this matter.

The recommendations of this decision as to whether the conduct constitutes a violation of the School Ethics Act may be adopted, modified or rejected by the SCHOOL ETHICS COMMISSION. If the School Ethics Commission does not adopt, modify or reject this decision within forty-five (45) days, and unless such time limit is otherwise extended, the recommendation of this decision as to whether a violation of the School Ethics Act occurred shall become final.

If the School Ethics Commission determines that a violation has occurred, it shall issue a written decision recommending to the Commissioner of Education an appropriate penalty and shall forward the record, including this recommended decision and its decision, to the Commissioner of Education. The Commissioner of Education may subsequently render a final decision as to the

appropriate penalty. If the Commissioner of Education does not render a final decision within forty-five (45) days of its receipt of the decision of the School Ethics Commission, and unless such time period is otherwise extended, the recommended decision of the School Ethics Commission shall become the final decision. Where the School Ethics Commission fails to act within the statutory time frame, and if the Commissioner fails to act within forty-five (45) days of the date of the School Ethics Commission decision was due, the decision of the administrative law judge shall become a final decision.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the SCHOOL ETHICS COMMISSION, DEPARTMENT OF EDUCATION, PO BOX 500, Trenton, NJ 08625-0500, marked 'Attention: Exceptions.' A copy of any exceptions must be sent to the judge and to the other parties."

1:6C-18.2 Processing of decisions

(a) The initial decision shall be issued and received by the School Ethics Commission and the Commissioner of Education no later than 45 days after the hearing is concluded.

(b) Within 10 days after the initial decision is filed with the agency head, the Clerk shall certify the entire record with original exhibits to the School Ethics Commission.

(c) Following a final determination that a violation of the School Ethics Act has occurred, the School Ethics Commission shall forward a copy of the decision embodying its final determination and recommended penalty to the Commissioner of Education for review of such penalty. The School Ethics Commission shall also forward the entire record with all original exhibits to the Commissioner.

(d) At the time the decision is forwarded to the Commissioner, the Commission shall serve a copy of the decision on the parties and shall notify the parties that they shall have 13 days from the date of such notice to file exceptions.

1:6C-18.3 Exceptions; replies

(a) Within 13 days from the date the judge's initial decision was mailed to the parties, any party may file written exceptions regarding findings of fact, conclusions of law or recommendations of penalty to the Commission.

(b) Within 13 days from the date the Commission's decision is forwarded to the Commissioner, any party may file written exceptions regarding the recommended penalty to the Commissioner.

(c) If the Commission fails to issue a decision within 45 days of receipt of the initial decision, unless such time period is extended, any party may file written exceptions regarding the penalty recommended by the judge with the Commissioner within 13 days of the statutory due date for the Commission's decision.

(d) Within five days from receipt of exceptions, any party may file a reply with the appropriate agency head.

(e) Copies of all exceptions and replies shall be served on all other parties and the judge.

1:6C-18.4 Final decision

(a) Within 45 days after receipt of the initial decision, the Commission may enter an order or a decision adopting, rejecting or modifying the initial decision which shall determine whether the conduct constitutes a violation of the School Ethics Act and, if so, shall recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official.

(b) If the Commission does not reject or modify the initial decision within 45 days, and unless the period is extended as provided by N.J.A.C. 1:1-18.8, the initial decision shall become a final decision as to the issue of whether a violation of the School Ethics Act occurred.

(c) Within 45 days of receipt of the Commission's decision, the Commissioner may enter a final decision adopting, modifying or rejecting the recommended penalty of the Commission. If the Commission failed to act within the statutory time period, the Commissioner may enter a final decision adopting, modifying or rejecting the recommended penalty of the administrative law judge within 45 days of the due date for the Commission's decision.

(d) If the Commissioner does not reject or modify the recommended penalty of the Commission within 45 days of receipt of that decision, the decision of the Commission shall become a final decision. If both the Commission and the Commissioner fail to act within the respective 45 day review periods, the initial decision of the administrative law judge shall become the final decision.

CHAPTER 7A. DEPARTMENT OF ENVIRONMENTAL PROTECTION
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. APPLICABILITY

1:7A-1.1 Applicability

The rules in this chapter shall apply to contested case hearings arising in the Department of Environmental Protection. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the UAPR, these rules shall apply.

SUBCHAPTERS 2 THROUGH 7. (RESERVED)

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

1:7A-8.1 Agency filing with the Office of Administrative Law; settlement efforts

Contested cases filed with the Department of Environmental Protection shall comply with the filing and transmission requirements of N.J.A.C. 1:1-8.1, provided however, upon written notice from the Department of Environmental Protection to all parties stating that the agency is attempting to resolve the matter through mediation and that all parties agree to continue the mediation efforts, the 30-day period provided by N.J.A.C. 1:1-8.1(b) shall be extended for an additional 30 days. At the conclusion of that 30-day extension, unless all parties agree to continue settlement efforts, the matter shall either be filed with the Office of Administrative Law or retained by the agency under the provisions of N.J.S.A. 52:14F-8.

CHAPTER 10. FAMILY DEVELOPMENT HEARINGS
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. APPLICABILITY

1:10-1.1 Applicability

(a) The rules in this chapter shall apply to matters transmitted to the Office of Administrative Law by the Division of Family Development (DFD) where an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency (CWA) or a local decision or inaction by a municipal welfare department (MWD). These rules also apply to food stamp intentional program violations. Any aspect of the 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 rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, 7 C.F.R. 273.16; 45 C.F.R. § 205.10; 7 C.F.R. § 273.15. In any case where these rules can be construed as conflicting with Federal requirements, the Federal requirements shall apply. Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided pursuant to Federal law.

SUBCHAPTERS 2 THROUGH 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:10-5.1 Representation at hearing

(a) An applicant or recipient may appear at a proceeding without legal representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4; 7 C.F.R. 273.15(c)(4); 45 C.F.R. 205.10(a)(3)(iii); 7 C.F.R. 273.15(d)(3)(ii)(D); 7 C.F.R. 273.15(p)(2).

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS

1:10-9.1 Adjournments

(a) In cases involving food stamp benefits, upon timely application an applicant/recipient shall receive one adjournment of the scheduled hearing date.

1. In cases involving an alleged intentional program violation, the applicant/recipient must request the adjournment at least 10 days before the scheduled hearing date and the hearing shall not be postponed for more than a total of 30 days. 7 CFR 273.16.

(b) In all other cases, upon timely application and for good cause shown, an applicant/recipient may receive one adjournment of the scheduled hearing date for a period of no more than 30 days.

1:10-9.2 Notice of hearing

(a) In cases involving AFDC or food stamp benefits, except for emergency hearings, the Clerk shall send written notice of the filing and hearing to each party at least 10 days before the scheduled hearing date.

1. The notice may be sent less than 10 days before the hearing date if the applicant or recipient so requests in order to expedite the hearing.

(b) In cases involving an alleged intentional program violation, written notice of the scheduled hearing shall be sent to the applicant/recipient at least 30 days prior to the hearing. 7 C.F.R. 273.16(e)(3).

1:10-9.3 Scheduling of hearing

(a) The hearing shall be held at a time, date and location convenient to the applicant or recipient.

(b) Upon presentation of acceptable information regarding an applicant's or recipient's illness or infirmity which would prevent his or her appearance at a hearing location, the hearing shall be scheduled at the applicant/recipient's residence.

SUBCHAPTER 10. DISCOVERY

1:10-10.1 Discovery

(a) The CWA or MWD shall provide the applicant or recipient or his or her authorized representative opportunity to review the entire case file and all documents and records to be used in the hearing. (7 C.F.R. 273.15(i)(1); 45 C.F.R. 205.10(a)(13)(i); 7 C.F.R. 273.16(e)(3)(c).)

(b) Any other discovery shall be by motion to the judge and for good cause shown. In no case shall the hearing date be adjourned to permit discovery under this subsection.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. CONTINUED ELIGIBILITY; EMERGENCY FAIR HEARINGS

1:10-12.1 (Reserved)

1:10-12.2 Emergency fair hearings in AFDC or General Assistance cases

(a) When DFD determines that a request for hearing should be scheduled as an emergency fair hearing:

1. DEA shall notify the Office of Administrative Law of the hearing request on the same day as the request is received. The Clerk of the Office of Administrative Law shall prepare the Office of Administrative Law transmittal form based upon the information provided by DFD.

2. The case shall be scheduled by the Office of Administrative Law for a hearing within three days after notification of the hearing request is received.

3. Notice of the time, date and place of the hearing shall be transmitted to DFD within one day after the Office of Administrative Law is notified of the hearing request. DFD shall notify the CWA or MWD, the petitioning applicant/recipient or the petitioner's representative of the scheduled hearing on the day that it receives notification of the hearing time and place.

4. The judge shall issue an initial decision no later than the day following the date of the hearing. A copy of the decision shall be transmitted to the Director of the DFD and the parties by an expeditious method designed to ensure receipt no later than the day following the date of the decision.

5. The petitioning applicant/recipient, his or her representative or the CWA or MWD may, by telephone, make exception or objection to the initial decision, to the DFD no later than the first day following the issuance of the initial decision.

6. The Director of the DFD shall issue a final decision no later than three days following the date the initial decision is received which shall accept, reject or modify the initial decision. On the date the final decision is issued, the DFD shall notify the CWA or MWD, the Office of Administrative Law and the petitioner or the petitioner's representative of the final decision and any relief ordered shall be provided on the date notice of the decision is received.

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:10-14.1 Attendance at hearing

(a) The applicant/recipient or a representative and the CWA or MWD and their representatives, if any, shall attend the hearing.

(b) The hearing may also be attended by other persons having an interest in the matter if permitted by the applicant or recipient.

(c) The judge may limit the number of persons in attendance at the hearing to comport with any hearing room space limitations.

(d) If neither the applicant/recipient nor a representative appears at a hearing concerning an alleged intentional program violation and timely adequate notice of the hearing was given to the applicant/recipient, the hearing shall be conducted ex parte. 7 C.F.R. 273.16(e); N.J.A.C. 10:87-11.4(l).

1:10-14.2 Intentional program violation hearings

At an intentional program violation hearing, the charged applicant/recipient has a right to remain silent and may refuse to answer questions. 7 C.F.R. 273.16(e)(2)(iii); 45 C.F.R. 235.113(b)(3)(ii)(K).

1:10-14.3 Independent medical assessment

For good cause, the administrative law judge may order an independent medical assessment or professional evaluation when the hearing involves medical issues. Such medical assessment shall be obtained at CWA or MWD expense. 7 C.F.R. 273.15(m)(2)(v); 7 C.F.R. 273.16(e)(2)(ii); 45 C.F.R. 205.10(a)(iii)(10); 45 C.F.R. 235.113(b)(6).

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:10-18.1 Initial decision (other than emergency hearing matters)

(a) In cases involving AFDC benefits, an initial decision shall be issued within 21 days from the date of the hearing.

(b) In cases involving food stamp benefits and temporary rental assistance, an initial decision shall be issued within 14 days from the date of the hearing.

(c) In cases involving food stamp intentional program violations, an initial decision shall be issued within 21 days from the date of the hearing.

(d) In cases involving General Assistance, an initial decision shall be issued within 21 days from the date of the hearing.

1:10-18.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to the Director of the DFD. Copies of the exception shall be served on all other parties and the judge. The exceptions must be received by the DFD no later than seven days after the date the initial decision was mailed to the parties. No replies or cross-exceptions shall be permitted.

1:10-18.3 Written initial decisions

All initial decisions shall be issued in writing, pursuant to N.J.A.C. 1:1-18.3. Oral initial decisions are not permitted.

1:10-18.4 Extension of time limits

Time limits for filing an initial decision, filing exceptions, or issuing a final decision shall not be extended.

SUBCHAPTER 19. SETTLEMENTS

1:10-19.1 Division of Family Development settlements

(a) The parties to a hearing may resolve a dispute, subsequent to transmittal of a matter to the Office of Administrative Law, by agreeing to settlement and withdrawal of the hearing request.

(b) Settlement prior to the scheduled hearing date shall not involve the administrative law judge. The DFD shall notify the Office of Administrative Law of any settlement and withdrawal so derived and the contested case shall be closed. The Office of Administrative Law shall immediately return the case file to DFD.

(c) If on the date of the scheduled hearing or at any time during the hearing the parties agree to settle the matter at issue, a "Stipulation of Settlement and Withdrawal" shall be executed by the parties. This document shall contain:

1. The reason for the hearing request;
2. The reason for settlement and terms of settlement; and
3. The effective date of eligibility and/or benefit entitlement resulting from settlement when appropriate.

(d) The execution of a Stipulation of Settlement and Withdrawal terminates the contested case. The Office of Administrative Law shall transmit the closed file to the Bureau of Administrative Review and Appeals (BARA), Division of Family Development within four days of the date of the scheduled hearing.

(e) A review of the settlement shall be completed and written notice shall be provided by BARA not later than three days after its receipt from the Office of Administrative Law. When approved, any terms or conditions of settlement shall be implemented within three days of the date notification of approval is received in the CWA or MWD. In the event settlement action is disapproved, the matter will be returned to the Office of Administrative Law within three days as a new case. The specific reason for returning the matter and applicable citation of law and regulations shall be clearly stated on the transmittal form.

(f) When implementation by the CWA or MWD is required in a settlement, a written report shall be sent by the CWA or MWD to the BARA within 30 days of the date the action was approved. Such report shall include the calculation of benefits in all cases involving a retroactive payment or a recalculation of benefit entitlement.

CHAPTER 10A. DIVISION OF YOUTH AND FAMILY SERVICES HEARINGS

SUBCHAPTER 1. APPLICABILITY

1:10A-1.1 Applicability

The rules in this chapter shall apply to matters transmitted to the Office of Administrative Law by the Division of Youth and Family Services (DYFS) involving issues of child abuse or neglect. These rules also apply to any case transmitted to the Office of Administrative Law by another State agency which is consolidated with a DFYS case involving issues of child abuse or neglect. Any aspect of the hearing not covered by the special hearing rules shall be governed by the Uniform Administrative Procedure Rules (UAPR) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the UAPR, these rules shall apply.

Subchapters 2 through 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:10A-12.1 Motion for access for records

(a) Any person or entity who is not a party to the contested case and who at any time prior to the issuance of the initial decision seeks access to the hearing, the record of the hearing, the initial decision, or other material protected by an order to seal issued pursuant to N.J.A.C. 1:10A-14.1 shall apply by motion to the administrative law judge.

(b) Motions for access to records shall be decided within 20 days from the date of submission.

(c) The order issued by the administrative law judge shall be submitted to the Director of the Division of Youth and Family Services for review. The Director of the Division of Youth and Family Services shall issue a final determination as to the issue of disclosure no later than 20 days from receipt of the order of the administrative law judge.

(d) Any person or entity who is not a party to the contested case and who at any time after issuance of the initial decision seeks access to the record of the hearing, the initial decision, or other material protected by an order to seal issued pursuant to N.J.A.C. 1:10A-14.1 shall apply by motion to the Director of the Division of Youth and Family Services. The Director of the Division of Youth and Family Services shall issue a final determination within 20 days of receipt of the motion.

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:10A-14.1 Public hearing; records as public; sealing a record

(a) In any DYFS matter involving allegations of child abuse or neglect which has not been consolidated with a case from another State agency, the judge shall immediately issue an order closing the hearing and sealing the record including all evidence, stenographic notes or audiotape and the initial decision.

(b) In any matter where in a DYFS case involving allegations of child abuse and neglect has been consolidated with a case transmitted by another State agency, the judge shall issue an order closing the hearing and sealing the record of the case as necessary to protect all DYFS records and reports regarding child abuse.

SUBCHAPTERS 15 THROUGH 16. (RESERVED)

SUBCHAPTER 17. CONSOLIDATION OF TWO OR MORE CASES; MULTIPLE AGENCY JURISDICTION CLAIM; DETERMINATIONS OF PREDOMINANT INTEREST

1:10A-17.1 Predominant interest regarding confidentiality issues

In any instance where a DYFS case involving allegations of child abuse and neglect has been consolidated with a case transmitted by another State agency, the Division of Youth and Family Services shall be deemed to have the predominant interest with regard to the issue of confidentiality of any records or reports of child abuse and neglect.

CHAPTER 10B. DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES APPLICANT/RECIPIENT HEARINGS
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. HEARING APPLICABILITY

1:10B-1.1 Applicability

(a) The rules in this chapter shall apply to matters transmitted pursuant to N.J.A.C. 10:6 to the Office of Administrative Law by the Division of Medical Assistance and Health Services involving applicants for or recipients of Medicaid and Medically Needy benefits or services.

(b) This chapter shall not apply to matters involving providers.

(c) Any aspect of the hearing not covered by these rules of special applicability 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 this chapter is inconsistent with the U.A.P.R., this chapter shall apply.

SUBCHAPTER 2. DEFINITIONS

1:10B-2.1 Definitions

For purposes of this chapter, the following definitions apply.

"Applicant" means any person who has made an application to become qualified to receive Medicaid or Medically Needy benefits.

"Recipient" means a New Jersey resident who has been determined to meet the applicable eligibility criteria for either the Medicaid or Medically Needy Programs and is determined to need medical care and services authorized under the New Jersey Medical Assistance and Health Services Act.

"Provider" means any person, public or private institution, agency or business concern approved by the Division of Medical Assistance and Health Services that is lawfully providing medical care, services, goods and supplies and holding, where applicable, a current valid license to provide such services or to dispense such goods or supplies.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:10B-5.1 Representation

An applicant/recipient may appear at a proceeding without representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4. See: 42 C.F.R. 431.206(b)(3).

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. CLERK'S NOTICE; SCHEDULING OF HEARING

1:10B-9.1 Clerk's notice

(a) The Clerk shall send a written notice of filing and hearing to each party at least 10 days before the scheduled hearing date.

(b) The notice shall indicate that the applicant/recipient may represent himself/herself or use legal counsel, a relative, a friend or other spokesperson as per the Federal Fair Hearing Regulations at 42 C.F.R. 431.206(b)(3).

(c) The notice shall establish the hearing location, time and date.

1:10B-9.2 Scheduling of hearing

(a) The hearing shall be conducted at a reasonable time, date and place.

(b) Upon presentation of acceptable information regarding an applicant's/recipient's illness or infirmity which would prevent his or her appearance at a hearing location, the hearing shall be scheduled at the applicant's/recipient's current residence.

SUBCHAPTER 10. DISCOVERY

1:10B-10.1 Discovery

(a) The county welfare agency or the Division of Medical Assistance and Health Services shall provide the applicant/recipient or his or her authorized representative an opportunity to review the entire case file and all documents and records to be used in the hearing. The review shall occur at a reasonable time before the hearing as well as during the hearing.

(b) If a party wants information other than what is provided in (a) above, the party must request permission from the judge. The judge may permit the additional discovery only if there is good cause. The judge may not delay the hearing to allow for additional discovery.

SUBCHAPTERS 11 THROUGH 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:10B-14.1 Attendance at hearing

The applicant/recipient or a representative and the county welfare agency or the Division of Medical Assistance and Health Services and their representatives, if any, shall attend the hearing.

1:10B-14.2 Independent medical assessment

For good cause, the administrative law judge may order an independent medical assessment if the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report or a medical review team decision. Such medical assessment shall be at the expense of the county welfare agency or of the Division of Medical Assistance and Health Services and shall be part of the record.

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:10B-18.1 Initial decision

An initial decision shall be issued within 21 days from the date of the hearing.

1:10B-18.2 Exceptions

(a) If the parties wish to take exception to the initial decision, such exception must be submitted in writing to the Director of the Division of Medical Assistance and Health Services. Copies of the exception shall be served on all other parties and the judge.

(b) Exceptions must be received by the Division of Medical Assistance and Health Services no later than seven days after the date the initial decision was mailed to the parties.

(c) No replies and cross-exceptions shall be permitted.

1:10B-18.3 Written initial decisions

All initial decisions shall be issued in writing. Oral initial decisions are not permitted.

SUBCHAPTERS 19 THROUGH 21. (RESERVED)

CHAPTER 11. INSURANCE FILING HEARINGS
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. APPLICABILITY

1:11-1.1 Applicability

The rules contained in this chapter shall apply to the notice and hearing of contested case matters involving the determination of a filing (as defined by N.J.A.C. 11:1-2.6) submitted by an insurer or a rating organization. Any aspect of notice or 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 rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTERS 2 THROUGH 14. (RESERVED)

SUBCHAPTER 15. EVIDENCE

1:11-15.1 Evidence

(a) At least 10 days prior to the commencement of the hearing or 10 days prior to the date on which an expert witness is scheduled to testify, the parties shall exchange, and shall file with the judge, written testimony for each individual that the party intends to call as an expert witness. The written testimony shall include the name, address, title, credentials and area of expertise of the witness and the nature and substance of his or her testimony.

(b) At the same time that the written testimony is exchanged, the parties shall also exchange all supporting data, calculations, work sheets and similar materials used by the expert witness in developing the written testimony. This supporting data shall not be filed with the judge. If the data has been previously distributed to the parties, through discovery or otherwise, the data need not be exchanged at this time.

(c) All written testimony which meets the requirements of N.J.A.C. 1:1-15.1 et seq. shall be admissible. Parties may object to the admissibility of the written testimony at the evidentiary hearing. When the prefiled testimony of a witness is admitted into evidence, the witness shall be made available and subject to cross-examination.

(d) Upon application of a party, the judge may exclude, in whole or in part, the testimony of a witness for failure to comply with the requirements of this section.

SUBCHAPTERS 16 THROUGH 21. (RESERVED)

CHAPTER 12. UNEMPLOYMENT BENEFIT AND STATE PLAN TEMPORARY DISABILITY CASES CHAPTER TABLE OF CONTENTS

SUBCHAPTERS 16 THROUGH 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

SUBCHAPTER 1. HEARING APPLICABILITY

1:12-1.1 Applicability

The rules in this chapter shall apply to unemployment benefit cases and State plan temporary disability hearings under N.J.S.A. 43:21-50(b) heard by the Board of Review or the appeal tribunals of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-1 (see also N.J.A.C. 12:20). Private plan temporary disability cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21-50(a) shall be conducted in accordance with N.J.A.C. 1:12A.

SUBCHAPTER 2. DEFINITIONS

1:12-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Appeal tribunal" means the entity which conducts hearings and renders decisions concerning employer and employee appeals of decisions for unemployment benefits made at the local office level. In so doing, the appeal tribunal acts as agency head.

"Appellate body" means either the appeal tribunal, Board of Review or hearing officer which is conducting the proceeding.

"Board of Review" means the entity which conducts appeals of unemployment benefit determinations and State plan temporary disability claim determinations made by an appeal tribunal. In so doing, the Board of Review acts as agency head.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12-5.1 Representation

(a) A party may represent himself or herself or may be represented by an attorney or a non-lawyer representative pursuant to R.1:21-1(f)(11). Representation by an attorney shall be at the party's expense. Representation by a non-lawyer representative shall comply with N.J.A.C. 1:1-5.4.

(b) In any unemployment benefits proceeding and in any State plan temporary disability claim proceeding of an appeal before an appeal tribunal or the Board of Review, all fees for attorneys representing claimants shall be approved by the Board of Review after it receives submission of an authorization form and a copy of the applicable decision.

(c) The amount of fees approved for persons representing claimants shall be discretionary with the Board of Review. In determining the amount of fees, the Board of Review shall at least consider the following factors:

1. The amount of time spent on the case;
2. The complexity of the case;

3. The services performed as noted on the authorization form or any other documentation to the Board of Review; and

4. The results achieved (that is, favorable or unfavorable).

(d) The Board of Review or any appeal tribunal, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey, the rules and regulations of the division, or the rules of the Board of Review.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12-9.1 Notice of hearing

(a) Written notices of the time and place of any in-person or telephone hearing shall be mailed to the parties in interest at least five days before the date of hearing but a shorter notice may be given if not prejudicial to the parties.

(b) The notice of hearing shall contain at least the following information:

1. That the parties have a right to object to an in-person or telephone hearing, whichever is scheduled; and

2. Written instructions as to how the hearing shall be conducted.

1:12-9.2 Adjournments

(a) Adjournments shall be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(b) Requests for adjournment of hearings scheduled before the appeal tribunal shall be made to the appeal tribunal which shall use its best judgment as to when adjournments of hearings shall be granted in order to secure all facts that are necessary and to be fair to the parties.

(c) Applications and requests for adjournment of hearings scheduled before the Board of Review shall be made at least 24 hours before the date of the scheduled hearing and shall be granted at the discretion of the Board of Review.

(d) All parties to an adjournment shall be responsible for giving prompt notice to their witnesses as to the adjournment.

1:12-9.3 (Reserved)

SUBCHAPTER 10. DISCOVERY

1:12-10.1 Inspection of Division files

(a) In cases involving unemployment compensation benefit appeals and State plan temporary disability claim appeals, requests for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance shall be addressed to the Board of Review.

(b) A request for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance shall be in writing and shall clearly state the nature of the information required and the reason therefor.

(c) Orders for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance may be issued in any proceeding to the extent necessary for the proper presentation of the case.

(d) In all cases where an application to supply a party or his or her representative with information from the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance is granted, the party shall be furnished with a copy of such information.

(e) Individuals may be assessed reasonable administrative costs for the copying of records and any other costs for obtaining information from the Board of Review.

(f) Following an appeal to the Appellate Division and upon direction of the Attorney General's office, the transcript of any proceeding which has been sound recorded shall be provided to all parties by the Board. Any request by an employer shall be accompanied by a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the Board or $ 300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the Board. The Board shall bill the employer for any amount due for the preparation of the transcript and any hard copies or shall reimburse the employer for any overpayment.

(g) To obtain a copy of a sound recording of any proceeding, the requesting party must file a request with the executive secretary of the Board. Such a request is subject to approval by the Board. The requesting party shall notify all other parties of such a request. The request shall be accompanied by a reasonable payment of costs in the amount of $ 15.00 for the initial copy of the sound recording and $ 10.00 for any subsequent copy.

(h) No claimant shall be charged any fee of any kind in any proceeding under the Unemployment Compensation Law by the Board of Review.

(i) No disclosure of information, obtained at any time from, and identifiable to, specific workers, employers or other persons for the proper administration of an appeal, shall be made directly or indirectly except as authorized by the Board of Review in accordance with N.J.A.C. 12:15-2.

SUBCHAPTER 11. SUBPOENAS

1:12-11.1 Subpoenas

Subpoenas to compel the attendance of witnesses and the production of records for any hearing on an appeal may be directed to be issued by a member of the Board of Review in cases appealed to the Board of Review, or by the appeal tribunal, in cases appealed to an appeal tribunal, only upon the showing of the necessity therefor by the party applying for the issuance for such subpoena.

1:12-11.2 Witness fees

(a) Witness fees at the rate of $ 1.00 for each day of attendance upon a hearing in response to a subpoena ad testificandum and mileage at the rate of $ 0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

(b) Witness fees at the rate of $ 2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of $ 0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon the presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

SUBCHAPTERS 12 THROUGH 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12-14.1 Public hearings

Hearings shall, in the absence of a showing of sufficient cause for a closed hearing, be open to the public.

1:12-14.2 Conduct of hearing

(a) The proceedings shall be fair and impartial and shall be conducted in such manner as may be best suited to determine the parties' rights.

(b) The appellate body shall open the hearing by ascertaining and summarizing the issue or issues involved in the appeal. The parties, their attorneys or representatives may examine or cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded the parties, which argument shall be made part of the record. Where a party is not represented, the appellate body shall give every assistance that does not interfere with the impartial discharge of its official duties. The appellate body may examine each party or witness to such extent as it deems necessary. All oral testimony shall be under oath or affirmation and shall be recorded.

(c) The appellate body may take such additional evidence as it deems necessary; provided, that in case such further evidence is taken, the parties shall be given proper notice of the time and place of such further hearing.

(d) The appellate body, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey or the rules and regulations of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance.

1:12-14.3 Appeals hearings

(a) All appeals to the Board of Review may be heard upon the evidence in the record made before the appeal tribunal, or the Board of Review may direct the taking of additional evidence before it.

(b) In the hearing of an appeal on the record, the Board of Review may limit the parties to oral argument or the filing of written argument, or both. If, in the discretion of the Board of Review, additional evidence is necessary to enable it to determine the appeal, the parties shall be notified by the Board of Review of the time and place such evidence will be taken. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issue.

(c) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of such additional evidence as the Board of Review may deem necessary. Such testimony shall be taken by the appeal tribunal in the manner prescribed for the conduct of hearings on appeals before appeal tribunals. Upon the completion of the taking of evidence by an appeal tribunal pursuant to the direction of the Board of Review, the claim or the issue involved in such claim shall be returned to the Board of Review for its decision upon the entire record, including the evidence before the appeal tribunal and such additional evidence and such oral argument as the Board of Review may permit before it.

(d) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of additional evidence and a decision or may remand for a new decision only.

1:12-14.4 Failure to appear

(a) If the appellant fails to appear for a hearing before an appeal tribunal, the appeal tribunal may proceed to make its decision on the record or may dismiss the appeal on the ground of nonappearance unless it appears that there is good cause for adjournment.

(b) If an appeal tribunal issued an order of dismissal for nonappearance of the appellant, the chief appeals examiner shall, upon application made by such appellant, within six months after the making of such order of dismissal, and for good cause shown, set aside the order of dismissal and shall reschedule such appeal for hearing in the usual manner. An application to reopen an appeal made more than six months after the making of such order of dismissal may be granted at the discretion of the chief appeals examiner.

1:12-14.5 Scheduling of hearings

(a) Hearings before the Board of Review or Appeal Tribunal may be conducted in-person or by telephone. A telephone hearing, which means a hearing at which any party, witness, representative or attorney appears via telephone, may be initiated by the Board of Review or the Appeal Tribunal or upon the request of any party with the consent of the Board of Review or the Appeal Tribunal. Both in-person and telephone hearings shall be subject to the rules governing hearings and appeals in this chapter.

(b) The Board of Review or Appeal Tribunal will schedule telephone hearings:

1. When it appears from the record that a party or necessary witness is located more than 50 miles from the location from which the Board of Review or Appeal Tribunal will conduct the hearing;

2. When a party or witness cannot appear in person because of a physical, medical or other compelling reason;

3. For good cause shown on a case-by-case basis ; or

4. For the administrative expedience of the Board of Review or Appeal Tribunal.

(c) Any party to an appeal may request a telephone hearing by immediately contacting the Board of Review or Appeal Tribunal upon receipt of the notice of the scheduled in-person hearing with reasons for the request to have a telephone hearing. Prior to the hearing, the requesting party shall provide written notice to all other interested parties of the request for the telephone hearing.

(d) Any party may object to a telephone hearing. Objections shall be made immediately upon receipt of the notice or request for a telephone hearing and shall:

1. Be received by the Board of Review or Appeal Tribunal in advance of the hearing; and

2. Set forth the reasons supporting the objections.

(e) The Board of Review or Appeal Tribunal may deny a party's objection to a telephone hearing if the Board of Review or Appeal Tribunal determines:

1. That the objecting party's intent is to purposely inconvenience the other party or delay the proceeding;

2. That a party or witness is more than 50 miles away from the hearing site;

3. That a person is unable to appear in person because of physical, medical or other compelling reason; or

4. That good cause exists to order a telephone hearing notwithstanding the party's objection.

(f) The Board of Review or Appeal Tribunal may deny a party's objection to an in-person hearing when good cause exists to order an in-person hearing notwithstanding the party's objection.

(g) If the Board of Review or Appeal Tribunal accepts a party's objections, an appropriate hearing, either in-person or by telephone, shall be scheduled by the Board of Review or Appeal Tribunal.

(h) The Board of Review or Appeal Tribunal shall exercise its discretion in granting or denying such requests and immediately notify the parties of its decision.

1:12-14.6 Conduct of telephone hearing

(a) The Board of Review or appeal tribunal, at the inception of the hearing, shall advise all participants that the proceedings are being recorded.

(b) Any party who fails to appear at the scheduled telephone hearing shall meet the requirements of N.J.A.C. 1:12-18.4 before any reopening of the hearing shall be granted.

(c) The Board of Review or appeal tribunal shall permit the parties, attorneys or other representatives a reasonable opportunity to question any witness testifying via telephone for the purpose of verifying the identity of such witness.

(d) Any party that intends to offer documentary or physical evidence at the telephone hearing shall submit a copy of that evidence to the Board of Review or appeal tribunal and all other interested parties immediately upon receipt of notice of the scheduled telephone hearing. Also, the requesting party shall provide timely notice of this request to offer evidence to all other interested parties.

1. Any evidence not submitted as required in this subsection may be admitted at the discretion of the Board of Review or the appeal tribunal provided that such evidence is submitted to the Board of Review or appeal tribunal and all other parties within 24 hours of the telephone hearing.

2. The other parties shall have 24 hours from the time of receipt of the evidence to properly respond to its admission and use.

3. Upon review of the evidence, the Board of Review or the appeal tribunal shall determine if the telephone hearing shall be continued.

(e) When the Board of Review or the appeal tribunal determines that a crucial document exists which is essential to the determination of the appeal, it shall make every effort to provide such document to the parties prior to the scheduled telephone hearing. If the document cannot be provided prior to the telephone hearing, the hearing may be postponed. If a document is disputed during the hearing, a continuance shall be granted to allow all parties an opportunity to review the document in question.

1:12-14.7 Disqualification of members of appeal tribunals

(a) No member of an appeal tribunal shall participate in the hearing of any appeal in which the member has an interest.

(b) Challenges to the interest of any member of an appeal tribunal may be heard and decided by the chief appeals examiner of the appeal tribunal, or, in the chief appeals examiner's discretion, referred to the Board of Review.

1:12-14.8 Hearing appeals on own motion

(a) Within the legal time limit for appeal following a decision by an appeal tribunal and in the absence of the filing by any of the parties to the decision of the appeal tribunal of a notice of appeal, the Board of Review, on its own motion, may remove such decision to itself and may either decide the case on the record below or may remand the decision to the appeal tribunal or may schedule a hearing before the Board of Review or order the parties to appear before it for a hearing on the claim or any issue involved therein.

(b) Such hearings shall be held only after five days' prior notice to the parties to the decision of the appeal tribunal, and shall be heard in the manner prescribed for the conduct of hearings before the Board of Review.

1:12-14.9 Case transfer on own motion

The Board of Review may, on its own motion, remove to itself or transfer to another Appeal Tribunal any case pending before an appeal tribunal for hearing and decision.

SUBCHAPTER 15. EVIDENCE

1:12-15.1 General rules

(a) All exhibits admitted into evidence shall be properly identified, appropriately marked and retained as part of the record.

(b) Hearsay evidence shall be admissible and accorded whatever weight the examiner deems relevant, appropriate, and reasonable under the circumstances. Notwithstanding the admissibility of hearsay evidence, the decision as rendered must be supported by sufficiently substantial and legally competent evidence to provide assurance of reliability and to avoid the fact or appearance of arbitrariness.

1:12-15.2 Stipulations

The parties to an appeal, with the consent of the appellate body, may stipulate in writing the facts involved. The appellate body may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence as it deems necessary to enable it to determine the appeal.

SUBCHAPTERS 16 THROUGH 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:12-18.1 Decisions of appeal tribunals

(a) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability claims and the reasons therefore shall be mailed to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

(b) The decision shall be in the following form:

1. The first section shall indicate the party appealing, the determination appealed from, the date of the decision, and the date of the initiation of the appeal. The appearances shall be noted.
2. The second section shall be a recital of the facts upon which the decision is based and shall be entitled "Findings of Fact." It shall include among all the pertinent facts the date the claim was filed.
3. The third section shall be entitled "Opinion" and shall contain the reasons for the decision.
4. The fourth section shall contain the "Decision." This shall be followed by the signature of the examiner. Each decision shall also indicate the date of hearing and mailing.

(c) Every decision of an appeal tribunal shall, immediately upon issuance, be transmitted to the executive secretary of the Board of Review for consideration. The Board shall forthwith determine whether or not the decision shall be allowed to stand.

1:12-18.2 Decisions of Board of Review

(a) Following the conclusion of proceedings on an appeal, the Board of Review shall forthwith announce its decision with respect to the appeal. The decision shall be in writing and signed by at least a majority of the Board of Review. It shall set forth the findings of fact of the Board of Review with respect to the matters appealed, its opinion and decision. A quorum of the Board of Review must be present when any decision is voted.

(b) If a decision of the Board of Review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision, which shall set forth the reasons why it fails to agree with the majority.

(c) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability claims shall be mailed by the Board of Review to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

1:12-18.3 Correction of determination

On application duly made or on its own motion, the appellate body may revise a determination of facts and the order, for the purpose of correcting clerical or typographical errors.

1:12-18.4 Reopening Appeal Tribunal decisions

(a) In the absence of jurisdiction by the Board of Review, a party to a benefit claim may file a request for reopening of an Appeal Tribunal decision if:

1. The party's appeal to the Board of Review was dismissed as late without good cause;
2. The party did not appear at the Appeal Tribunal hearing for good cause shown;
3. The party is seeking to amend the Appeal Tribunal decision due to a mistake in law or computation thereby affecting the legal conclusion of the Appeal Tribunal; or
4. The party has new or additional evidence.

(b) Such request shall be submitted as promptly as possible, shall not act as a stay of proceedings in the case, and shall not suspend the payment of benefits. Additional time for such request may be granted where fraud, newly discovered evidence, or other good cause is shown.

(c) The Appeal Tribunal shall notify all interested parties of the request for reopening. The parties shall have 10 days to submit written arguments. After reviewing the matter, the Appeal Tribunal will schedule a hearing, issue an amended decision, or deny the request in an order explaining the reasons. All interested parties will be notified by the Appeal Tribunal of any subsequent decision or order which shall contain appeal rights to the Board of Review.

1:12-18.5 Reopening Board of Review decisions

(a) A party to a benefit claim may file a request for reopening of a Board of Review decision within 10 days after the day of mailing of such decision. The requesting party shall notify all other parties of such a request for reopening. Such request shall not act as a stay of proceedings in the case and shall not suspend the payment of benefits. Failure of the Board of Review to act upon a request for reopening within 20 days of the date on which it is filed shall constitute a denial thereof as of the expiration of that period. Additional time may be granted where fraud, newly discovered evidence, or other good cause is shown.

(b) Any party, including the appellant whose appeal resulted in any affirmation of the appeal tribunal decision on the record made by the appeal tribunal, may apply for reopening of the Board's decision. If such application is granted all parties will be notified if a new hearing is scheduled.

CHAPTER 12A. PRIVATE PLAN TEMPORARY DISABILITY INSURANCE CASES CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. HEARING APPLICABILITY

1:12A-1.1 Applicability

The rules in this chapter shall apply to private plan temporary disability insurance cases heard by hearing officers of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-50(a) (see also N.J.A.C. 12:18). State plan temporary disability cases shall be heard by the Board of Review pursuant to N.J.S.A. 43:21-50(b), in accordance with N.J.A.C. 1:12.

SUBCHAPTER 2. DEFINITIONS

1:12A-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq.

"Division" means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development.

"Hearing officer" means the individual assigned to hear and decide appeals concerning private plan temporary disability benefits. In so doing, the hearing officer acts as agency head.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12A-5.1 Representation

A party may represent himself or herself or may be represented by an attorney or a non-lawyer representative pursuant to R. 1:21-1(f)(11). Representation by an attorney shall be at the party's expense. Representation by a non-lawyer representative shall comply with N.J.A.C. 1:1-5.4.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12A-9.1 Informal hearing

After the filing of a complaint, the Division shall conduct such investigations and informal hearings as may be necessary to determine the facts and settle the issues and, pending a disposition, a formal hearing shall not be scheduled.

1:12A-9.2 Notice of formal hearing

(a) If the issues raised by the complaint are not otherwise settled, they shall be referred to a hearing officer, who shall afford the interested parties thereto a reasonable opportunity for a full, fair and impartial hearing, in accordance with the procedure required under this chapter.

(b) Written notices of the time and place of any hearing shall be given to the claimant and employer, or their authorized representatives, insurer or organization paying benefits, and all other parties in interest at least five days before the date of hearing, but a shorter notice may be given if not prejudicial to the parties.

(c) A party to whom a notice of appeal has been sent shall be ready and present with all evidence and necessary witnesses at the time and place specified and shall be prepared to dispose of all issues and questions involved in the proceeding.

(d) A notice of hearing may be served personally or by certified or registered mail or by telegram upon a party or his or her duly authorized representative.

SUBCHAPTER 10. DISCOVERY

1:12A-10.1 Inspection of records

(a) Orders for the production or inspection of records of the Division may be issued in any proceeding before the hearing officer, but only to the extent necessary for the purpose of the proceeding and to enable any party to the proceeding to fully discharge his or her obligation or safeguard his or her rights under the Act.

(b) A request for the production or inspection of records shall be addressed to the hearing officer, and shall state clearly the nature of the information desired and the reason therefor. The hearing officer may determine whether or not the request shall be granted and, if granted, inspection of the records may be allowed or a copy of the records furnished.

SUBCHAPTER 11. SUBPOENAS

1:12A-11.1 Issuance of subpoenas

(a) The hearing officer shall have the power to administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records.

(b) Subpoenas to compel the attendance of witnesses or production of records shall be issued by the hearing officer only upon the showing of the necessity therefor by the party applying for the issuance of such subpoena.

1:12A-11.2 Witness fees

(a) Witness fees at the rate of $ 1.00 for each day of attendance upon a hearing in response to a subpoena to testify and mileage at the rate of $ 0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon presentation of a voucher signed by the

individual entitled thereto and properly certified by a member of the hearing officer before whom the individual appeared as a witness.

(b) Witness fees at the rate of $ 2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of $ 0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon the presentation of a voucher signed by the individual entitled thereto and properly certified by the hearing officer before whom the individual appeared as a witness.

SUBCHAPTERS 12 THROUGH 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12A-14.1 Conduct of hearings

(a) The hearing before the hearing officer shall be conducted in such order and manner as may provide a fair and impartial hearing to ascertain the facts and determine the rights of parties.

(b) At such hearing, evidence exclusive of ex parte affidavits may be produced by any party, but the hearing officer shall not be bound by the rules of evidence.

(c) The hearing officer shall open the hearing by ascertaining the facts and summarizing the issues involved on the record.

(d) Any individual who is a party, or an attorney or non-attorney representing a party, may examine or cross-examine witnesses, inspect documents and explain or rebut any evidence. The hearing officer may examine each party or witness to such extent as he or she deems necessary.

(e) Any number of proceedings before the hearing officer may be consolidated for the purpose of hearing when the facts and circumstances are similar in nature and the rights of any party will not be prejudiced thereby. Notice of such consolidation shall be given to the parties or their representatives.

(f) All testimony at a hearing shall be under oath or affirmation and recorded, but need not be transcribed unless the order on the disputed claim is to be reviewed.

(g) The hearing officer may take additional evidence as he or she deems necessary, provided the parties shall be given proper notice of the time and place of hearing.

(h) The parties may stipulate the facts and issues involved and based thereon the hearing officer may make a determination and an order disposing of the issues which shall be final and binding.

1:12A-14.2 Dismissal of complaint

(a) After due notice of the time and place of hearing or an adjourned hearing, if any party fails or neglects to appear, the issues may be decided upon the basis of the evidence available, the complaint may be dismissed or evidence may be taken from the parties and witnesses appearing and the case disposed of in accordance with such evidence. A complaint may be dismissed for failure to prosecute without good cause within a reasonable time. All parties shall be notified of the dismissal and the reasons therefor.

(b) Any complaint dismissed by reason of the failure to appear at a scheduled hearing or failure to prosecute may be reconsidered by the hearing officer provided good cause is shown for such

failure and an application for reopening the proceeding is made within 10 days after mailing or notification of the order of dismissal.

(c) A pending complaint, with the approval of the hearing officer, may be withdrawn by the complainant, in writing, or orally at the time of hearing. All parties to the proceeding shall be notified of the withdrawal.

SUBCHAPTER 15. DECISIONS

1:12A-15.1 Rendition of decision

(a) Upon the completion of any hearing, the hearing officer shall promptly make a determination of facts, and a signed written order disposing of the issues presented, which shall be final and binding on the claimant, the employer, the insurer, the organization paying benefits and all other parties. The decision shall set forth a statement of the facts involved, the reasons and the order.

(b) A copy of such order shall be served upon each of the parties or their duly authorized representatives by registered mail, addressed to his or her last known address.

(c) The order of the hearing officer shall be final and benefits paid or denied in accordance with the order.

(d) Any appeal of the order shall be in accordance with the Rules of Court.

1:12A-15.2 Correction of determination

On application duly made or on his or her own motion, the hearing officer may revise a determination of facts and the order, for the purpose of correcting clerical or typographic errors.

CHAPTER 12C. DEPARTMENT OF LABOR AND COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED VOCATIONAL REHABILITATION CASES CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. HEARING APPLICABILITY

1:12C-1.1 Applicability

The rules in this chapter shall apply to vocational rehabilitation cases transmitted by the Department of Labor arising under N.J.S.A. 34:16-20 et seq. or by the Commission for the Blind and Visually Impaired arising under N.J.S.A. 30:6-11. Any aspect of the OAL hearing not covered by these special rules shall be governed by the Uniform Administrative Procedure Rules (UAPR) contained in N.J.A.C. 1:1. To the extent that these special rules are inconsistent with the UAPR, these rules shall apply.

SUBCHAPTER 2. DEFINITIONS

1:12C-2.1 Definition of Commissioner

As used in this chapter, "Commissioner" means the Commissioner of the Department of Labor if the case was transmitted to OAL for hearing pursuant to this chapter by the Department of Labor, or the Commissioner of the Department of Human Services if the case was transmitted to the OAL for hearing pursuant to this chapter by the Commission for the Blind and Visually Impaired.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12C-5.1 Representation

Pursuant to 34 C.F.R. 361.57, the applicant or client may be represented by himself or herself, by an attorney, by a parent, guardian, or friend, or by the Client Assistance Program located in New Jersey Protection and Advocacy, Inc., pursuant to the procedures set forth in N.J.A.C. 1:1-5.4.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING; CLERKS NOTICES, ADJOURNMENT; INACTIVE LIST

1:12C-9.1 Scheduling

Upon filing a case pursuant to this chapter, a hearing shall be scheduled which shall be no later than 60 days from the date of the request for hearing, unless the parties agree to a specific extension of time.

SUBCHAPTERS 10 THROUGH 17. (RESERVED)

SUBCHAPTER 18. INITIAL DECISION; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS

1:12C-18.1 Initial decision

An initial decision shall be issued in writing no later than 30 days from the conclusion of the hearing.

1:12C-18.2 Final decision

(a) Either party may request a review by the Commissioner of the initial decision within 20 days of its mailing to the applicant and to the Director of Vocational Rehabilitation Services or to the Executive Director of the Commission for the Blind and Visually Impaired. If neither party requests review of the initial decision by the Commissioner within 20 days, the decision of the administrative law judge shall be deemed final.

(b) The Commissioner shall provide both parties the opportunity to submit additional information relevant to a final decision within 15 days of receipt of the request for review.

(c) The Commissioner shall not overturn or modify the decision of the administrative law judge, or part of the decision, that supports the position of the applicant or eligible individual unless the Commissioner concludes, based on clear and convincing evidence, that the decision of the administrative law judge is clearly erroneous on the basis that it is contrary to the approved State Plan, the Workforce Investment Act, P.L. 105-220 (1998), Federal regulations implementing the Act, or State rules or policies that are consistent with Federal requirements.

(d) The final decision shall be issued by the Commissioner no later than 30 days from receipt of the request for review.

1:12C-18.3 Extensions

Except for the time limitation for the parties to request a review of the initial decision set forth in N.J.A.C. 1:12C-18.2(a), at the request of a party for good cause shown, the time limits established by these special rules may be extended for a reasonable time.

CHAPTER 13. MOTOR VEHICLES COMMISSION CASES
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. APPLICABILITY

1:13-1.1 Applicability

(a) The rules of this chapter shall apply to hearings transmitted by the Motor Vehicle Commission (MVC) except fatal accident cases, which shall be conducted in accordance with N.J.S.A. 39:5-30(b) and (e) and N.J.A.C. 1:13-14.4(b).

(b) Any aspect of the 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 rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTERS 2 THROUGH 3. (RESERVED)

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:13-4.1 Agency conference; failure to reach settlement

(a) The Motor Vehicle Commission shall, pursuant to N.J.A.C. 13:19-1.2, conduct a conference in any case where the hearing request sets forth disputed material facts which the licensee intends to raise at the hearing. The conference shall be conducted pursuant to N.J.A.C. 13:19-1.3 through 13:19-1.8. If the hearing request does not set forth disputed material facts but does present legal issues and arguments, the Chief Administrator of the MVC may decide the case based upon the written record, may schedule a conference pursuant to N.J.A.C. 13:19-1.3 through 13:19-1.8 or may transmit the matter directly to the OAL for a hearing.

(b) If settlement is not reached, the parties shall use the conference to prepare the issues and evidence for the hearing, including:

1. Ascertaining whether the licensee disputes any facts recorded on the licensee's record abstract issued by MVC, and, if so, which facts and on what basis;

2. Ascertaining whether the licensee disputes the severity of the action proposed by MVC, and, if so, on what basis;

3. Ascertaining any discovery needs of the licensee; and

4. Ascertaining in excessive points cases whether the licensee is entitled to a time credit and, if so, the length thereof.

(c) At or forthwith after the conference, MVC shall supply the licensee with any material requested pursuant to N.J.A.C. 1:13-10.1 (Discovery), or any other appropriate documents.

(d) If settlement is not reached, MVC shall transmit the case to the Office of Administrative Law, including the documents set forth in N.J.A.C. 1:13-14.3(b) and (c).

SUBCHAPTERS 5 THROUGH 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

§ 1:13-10.1 Discovery in excessive points, persistent violator and surcharge cases

(a) Discovery in excessive points, persistent violator and surcharge cases shall be limited to the records of MVC with respect to the case. The records shall include a certified copy of the licensee's driving record abstract, relevant notices and orders of suspension, and certified proof of relevant mailings to the licensee. In surcharge cases, when the licensee is contesting the validity of and conviction or administrative suspension entered on the surcharge bill, the records shall also include any documentary evidence in the possession of MVC which supports the contested entry.

(b) MVC shall supply the licensee with a copy of the records set forth in N.J.A.C. 1:13-10.1(a).

(c) The licensee may make any discovery request either as part of the licensee's request to MVC for a hearing or at any pretransmission conference conducted by MVC.

SUBCHAPTERS 11 THROUGH 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:13-14.1 Proceeding on the papers

MVC excessive points, persistent violator and surcharge cases may be conducted as proceedings on the papers, in accordance with N.J.A.C. 1:1-14.8.

1:13-14.2 Certification

(a) The licensee shall return a completed certification to the Clerk pursuant to N.J.A.C. 1:1-14.8.

(b) In excessive points and persistent violator cases, the licensee shall indicate in the certification whether he or she disputes the facts recorded on the licensee's driving abstract issued by MVC or disputes the severity of the sanction proposed by MVC, or both, or wants to raise any other relative issues.

(c) In surcharge cases, the licensee shall explain in the certification why the surcharge is not required or is inaccurately calculated.

1:13-14.3 Agency case

(a) In excessive points and persistent violator cases, MVC's case will be based on the licensee's driving record, a prehearing conference report, relevant notices and orders of suspension, certified proof of relevant mailings to the licensee, and any other documentary evidence or legal briefs necessary.

(b) In surcharge cases, MVC's case will be based on the documents in (a) above, and shall also include the surcharge bill and, if the licensee is contesting the validity of any conviction or administrative suspension entered on the surcharge bill, documentary evidence in the possession of MVC which supports the contested entry.

1:13-14.4 (Reserved)

1:13-14.5 Failure to appear

(a) If the licensee fails to submit the certification required by N.J.A.C. 1:13-14.2, the provisions of N.J.A.C. 1:1-14.4 shall apply.

(b) If, after appropriate notice, the licensee fails to appear at a preliminary fatal accident hearing scheduled pursuant to N.J.S.A. 39:5-30, the judge shall issue an order immediately suspending or continuing the suspension of the licensee's driving privileges. Thereafter, the provisions of N.J.A.C. 1:1-14.4 shall apply.

SUBCHAPTERS 15 THROUGH 21. (RESERVED)

CHAPTER 13A. DIVISION OF CONSUMER AFFAIRS LEMON LAW HEARINGS CHAPTER TABLE OF CONTENTS

SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS

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.

1:13A-1.2 Presumptions

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

CHAPTER 14. BOARD OF PUBLIC UTILITIES
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

1:14-1.1 Applicability

The special rules in this chapter shall apply to contested case hearings arising before the Board of Public Utilities (BPU). Any aspect of the 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.

SUBCHAPTER 2. DEFINITIONS

1:14-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Judge" means an administrative law judge, the BPU or a single Commissioner of the BPU who presides over a contested case under N.J.S.A. 48:2-32.

"Public hearing" means a hearing conducted pursuant to N.J.S.A. 52:14B-4(g) because the law requires the hearing in conjunction with the contested case. It is not an "evidentiary hearing" or "plenary hearing" as defined in N.J.A.C. 1:1-2.1. It is a hearing to which the public is specifically invited to attend and express views, to provide comments or to raise objections to the subject matter being considered.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:14-5.1 Appearance by the BPU

The BPU may be represented by a deputy attorney general or a non-lawyer agency employee pursuant to N.J.A.C. 1:1-5.4(a).

SUBCHAPTERS 6 THROUGH 7. (RESERVED)

SUBCHAPTER 8. TRANSMISSION OF CONTESTED CASES TO THE OFFICE OF ADMINISTRATIVE LAW

1:14-8.1 Transmittal to the OAL

In the transmittal form, as required by N.J.A.C. 1:1-8.2, the BPU shall indicate whether it will be a party to the proceeding and whether it will be represented by an agency employee pursuant to N.J.A.C. 1:1-5.4(a) or a deputy attorney general.

SUBCHAPTER 9. SCHEDULING; NOTICES

1:14-9.1 Notice of hearing

(a) Upon receiving notice of the time, date and place of hearing from the Clerk, in accordance with N.J.S.A. 48:3-17.7 a petitioner who has filed for authority to exercise the power of eminent domain shall give each respondent whose name and address is known at least 20 days notice of the hearing. At least five days prior to the hearing date, the petitioner shall file with the judge proof of such notice pursuant to N.J.A.C. 1:1-7.2.

(b) In any proceeding, the judge may require a party to give notice of the hearing and its scope to persons who may be affected by the proceeding, which may include publication and posting of notice of hearing, at such party's expense, in such manner and for such time and in such newspapers as the judge may designate.

1:14-9.2 Public hearings

(a) Whenever a public hearing is required by statute or rule the judge may instruct the utility to secure an appropriate location for the hearing and to accomplish whatever public notice may be required by statute or rule.

(b) Unless a statute requires otherwise or the judge directs otherwise for good cause shown, public hearings shall be conducted during the evening after regular business hours or at some other time which would be convenient to those persons interested in the subject matter of the public hearing.

(c) The Clerk shall notify the parties to the proceeding of any public hearing and shall ensure that the proceeding is stenographically transcribed.

(d) Persons opposing or supporting petitions or tariff schedules may testify at public hearings. The judge may permit the utility or other parties to cross-examine these persons. Persons who testify at public hearings shall not be entitled to notice of any subsequent proceedings unless they qualify as a participant or intervenor under N.J.A.C. 1:1-16.

SUBCHAPTER 10. DISCOVERY

1:14-10.1 Depositions

In addition to the discovery methods specified in N.J.A.C. 1:1-10.2(a), depositions upon oral examination or written questions of experts and other designated witnesses whose written testimony has been prefiled in the case shall be available upon written notice by a party in a ratemaking proceeding.

SUBCHAPTERS 11 THROUGH 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:14-14.1 Prefiled testimony

(a) The judge may require that all parties prefile their direct testimony in writing, certified, verified or sworn to under oath. The schedule for the submission of this testimony shall be established by the judge to ensure a fair and expeditious hearing.

(b) The judge shall adjust the discovery schedule to facilitate the timely filing of prefiled direct testimony.

1:14-14.2 Cross-examination

The judge may restrict any cross-examination whose purpose appears to be primarily for discovery.

1:14-14.3 Transcripts

(a) In cases involving an order to show cause or an investigative order initiated by the BPU, respondents shall purchase an original and one copy of the transcript and shall provide the judge with a copy of the hearing transcript within 15 working days of the date of hearing. In all other cases, the petitioner shall provide the judge with a copy of the hearing transcript within 15 days of the hearing date.

(b) The party responsible for providing the judge with a copy of the transcript is responsible for the cost of the original and one copy of the transcript, the daily appearance fee of the court reporter and, when applicable, any costs associated with complying with N.J.A.C. 1:1-14.11(j).

(c) The judge may waive or modify the application of this rule at any time for good cause shown.

1:14-14.4 Interlocutory review

(a) When a party requests interlocutory review, the BPU shall make a determination as to whether to accept the request and conduct an interlocutory review by the later of the following:

1. Ten days after receiving the request for interlocutory review; or
2. The BPU's next regularly scheduled open meeting after expiration of the 10-day period from receipt of the request for interlocutory review.

(b) If the BPU determines to conduct an interlocutory review, the BPU shall issue a decision, order or other disposition of the review within 20 days of that determination.

(c) Where the BPU does not issue an order within the timeframe set out in (b) above, 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 Board and the Director of the Office of Administrative Law concur.

SUBCHAPTER 15. EVIDENCE RULES

1:14-15.1 Witnesses and prefiled testimony

(a) Sworn, certified or verified written prefiled testimony of a witness may be admitted by the judge. Unless the parties consent to the admissibility of this written testimony without the necessity of an appearance, the witness shall appear at the hearing and be available for cross-examination on the prefiled written testimony.

(b) The judge may preclude any witness from testifying in a party's direct case when the witnesses' written testimony has not been filed in accordance with a schedule for such submissions established by the judge.

SUBCHAPTERS 16 THROUGH 21. (RESERVED)

CHAPTER 19. CASINO CONTROL COMMISSION
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. APPLICABILITY

1:19-1.1 Applicability

(a) The rules in this chapter shall apply to contested case hearings arising under the Casino Control Act, N.J.S.A. 5:12-1 et seq.

(b) Any aspect of the hearing process not covered by the special hearing rules in this chapter shall be governed by the provisions of the Casino Control Act and the Uniform Administrative Procedure Rules (UAPR) contained in N.J.A.C. 1:1. To the extent that the special hearing rules in this chapter are inconsistent with the UAPR, the rules in this chapter shall apply.

SUBCHAPTER 2. DEFINITIONS

1:19-2.1 Initial decision defined

"Initial decision" means the recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing, issued by the administrative law judge, commission member, or hearing officer appointed pursuant to N.J.S.A. 5:12-107a and made a part of the record which is sent to the Casino Control Commission for a final decision.

SUBCHAPTERS 3 AND 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:19-5.1 Multiple party representation

(a) In any circumstances described in (b) below, an attorney who intends to represent more than one party in the same or a substantially related matter shall file a petition for approval no later than 10 days after filing a pleading or entering an appearance in the matter, whichever is earlier. The petitioner shall file such petition with the Casino Control Commission (Commission), or with the Clerk of the Office of Administrative Law (OAL) if the matter has been transmitted to it, and one copy with the Division of Gaming Enforcement.

1. The Division may, within 10 days from the date that the petition is filed, file a written response to the petition with the Commission, or with the OAL, if the matter has been transmitted to it.

(b) No attorney shall represent the following parties respondent unless a petition pursuant to (a) above is granted:

1. A casino licensee or applicant and any person who at the time of the alleged violation was an employee of said licensee or applicant;

2. A casino service industry enterprise licensee or applicant and any person who at the time of the alleged violation was employed by said licensee or applicant;

3. Two persons who at the time of the alleged violation were employed by the same casino licensee or applicant where one such employee had supervisory responsibility over the other employee; or

4. Two persons who at the time of the alleged violation were employed by the same casino service industry enterprise licensee or applicant where one such employee had supervisory responsibility over the other employee.

(c) Any petition filed pursuant to (a) above shall be in writing and shall include:

1. The nature of the petition and the reasons therefore;

2. The name and docket number of the matter involved;

3. The name and address of the parties represented;

4. A concise statement of the nature of the allegations raised in the complaint and the reasons why no conflict of interest is presented;

5. The certification of the attorney/petitioner detailing the basis of his or her belief that the representation will not adversely affect his or her relationship with each party respondent; and

6. The certification of each respondent acknowledging full disclosure of the potential conflict of interest and consenting to his or her representation by the attorney/petitioner.

(d) Upon receipt of a petition pursuant to (a) and (c) above:

1. If the matter will be heard by the Commission, the matter shall be forwarded to the chair or to such other Commission member as the chair may designate. Thereafter, with the advice and recommendation of the General Counsel of the Commission, the petition shall be evaluated on the papers submitted and in conformity with the Rules of Professional Conduct governing conflict of interest, R.P.C. 1.7 through 1.10, and any applicable statutory provisions, judicial decisions, rules of court, or determinations of the Supreme Court's Advisory Committee on Professional Ethics or other appropriate authority.

2. If the matter has been transmitted to the OAL for hearing, the petition shall be forwarded to the Office of Administrative Law for determination by an administrative law judge.

(e) All interested parties shall be advised of the decision of the judge, either orally or in writing no later than 15 days from the date that the petition is filed. If the decision is communicated orally, it shall be reduced to writing and mailed to the petitioner within five days.

(f) Any time limitations imposed by (a) and (e) above may be extended by the judge for good cause, upon notice to all parties.

(g) Any party may appeal from the determination of the chair or the chair's designee to the full Commission upon written notice filed within five days. If the petition is determined by an administrative law judge, appeal shall be to the Director of the Office of Administrative Law pursuant to N.J.A.C. 1:1-14.10.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. SERVICE AND FILING OF PAPERS

1:19-7.1 Notices

Unless otherwise provided by the Casino Control Act, orders and notices related to a contested case including, without limitation, notices concerning the scheduling of conferences, hearings, deferrals, reinstatement after deferrals and postponements shall be served upon all parties by ordinary mail, except that hearing notices in proceedings against a licensee or registrant shall be served personally or by certified mail. All hearing notices shall be served at least 10 days prior to the hearing.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. ADJOURNMENTS; INACTIVE LIST

1:19-9.1 Placement on inactive list pending disposition of charges against applicant or respondent

(a) An applicant or respondent who is currently being prosecuted for or charged with an offense that is enumerated in N.J.S.A. 5:12-86c may move to place the case on the inactive list pursuant to N.J.S.A. 5:12-86d. Any such motion shall be processed in accordance with the provisions of N.J.A.C. 1:1-9.7 except that the judge shall, in all cases, grant the motion if the applicant or respondent establishes the existence of such prosecution or pending charge.

(b) An applicant or respondent whose case has been placed on the inactive list pursuant to this section shall notify the judge within 10 days of the disposition of the charge that was the basis for the deferral. Any applicant or respondent who fails to comply with the notice requirements of this subsection shall be deemed to have withdrawn his or her request for a hearing pursuant to N.J.A.C. 1:1-19.2. Unless the applicant or respondent submits to the Casino Control Commission (Commission) a satisfactory written explanation for his or her failure within 20 days of the date of disposition, the Commission may take final action on the case pursuant to N.J.A.C. 19:42-3.3.

(c) Any case placed on the inactive list pursuant to this section shall be returned to active status by the judge assigned to the case immediately upon:

1. The receipt of notice from the applicant or respondent pursuant to (b) above; or

2. The expiration of the deferral period established by the judge pursuant to N.J.A.C. 1:1-9.7(a)1.

(d) Notwithstanding (c)2 above and N.J.A.C. 1:1-9.7(a)3, a judge shall continue the inactive status of a case placed on the inactive list pursuant to (a) above if the applicant or respondent demonstrates that:

1. The prosecution or charge remains pending; and

2. The failure to achieve disposition has not been caused by any action or inaction of his or her part.

1:19-9.2 Adjournments

(a) An application for the adjournment of a proceeding scheduled to be heard directly by the Casino Control Commission (Commission) or by a member of the Commission shall be made to the Commission clerk or representative designated in the scheduling notice; provided, however, that the adjournment of a hearing may only be approved by the judge. An application for adjournment of a matter transmitted to the Office of Administrative Law shall proceed pursuant to N.J.A.C. 1:1-9.6.

(b) The conduct of voluntary settlement negotiations shall not be considered sufficient grounds for the issuance of an adjournment.

SUBCHAPTER 10. DISCOVERY

1:19-10.1 Time for discovery

(a) Each party to a contested case shall provide, at a minimum, the following discovery to each other party either personally or by ordinary mail:

1. A copy of any document which the party intends to introduce at the hearing;
2. A list of the names and addresses of any witnesses which the party intends to call at the hearing; and
3. The qualifications of any expert witness which the party intends to call at the hearing and a copy of any reports prepared by the witness or a summary of the testimony that the witness will offer.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:19-12.1 Emergency relief; suspension, limitation or conditioning of license or registration

(a) Pursuant to N.J.S.A. 5:12-104, 108 and 129, the Casino Control Commission (Commission) may, upon application by the Division of Gaming Enforcement, issue an emergency order for the suspension, limitation or conditioning of any registration or license, other than a casino license, pending a final decision in a contested case.

(b) Applications for emergency relief shall be served by the Commission on all parties pursuant to N.J.A.C. 19:42-4.1 and, if the termination of existing agreements between a party and a casino licensee or applicant is requested, on all casino licensees and applicants.

(c) Applications for emergency relief may be granted without a plenary hearing upon a finding by the Commission that there is a reasonable possibility that the licensee or registrant will be found disqualified pursuant to N.J.S.A. 5:12-86 or that such action is necessary to:

1. Prevent a violation of the Casino Control Act (Act) or the criminal laws of this State;
2. Preserve the public peace, health, safety, morals, good order and general welfare; or
3. Preserve the public policies of the Act.

(d) A person on whom an emergency order has been served shall thereafter be entitled to a plenary hearing.

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

1:19-13.1 Conduct of prehearing conference by a designated representative of the Casino Control Commission

(a) If a matter will be heard by the Casino Control Commission (Commission), prior to the transmission of a contested case to a hearing commissioner, the chair may designate a representative to conduct any prehearing conference proceedings authorized by N.J.A.C. 1:1-13.

(b) If, pursuant to (a) above, a representative of the chair is designated to conduct a prehearing conference, the designated representative shall issue a prehearing memorandum in accordance with the requirements of N.J.A.C. 1:1-13.2 and such memorandum shall have the same force and effect as a prehearing order issued by a judge.

(c) Settlements reached at a prehearing conference scheduled pursuant to (a) above shall be submitted to the Commission for disposition pursuant to N.J.A.C. 19:42-2.11.

SUBCHAPTER 14. CONDUCT OF CONTESTED CASES

1:19-14.1 Rules concerning all contested cases

(a) In addition to any authority granted in the Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1, the judge shall have the authority to:

1. Administer oaths and to require testimony under oath, pursuant to N.J.S.A. 5:12-65;
2. Serve process or notices in a manner provided for the service of process and notice in civil actions in accordance with the rules of the court, pursuant to N.J.S.A. 5:12-65;
3. Issue subpoenas and compel the attendance of witnesses at any place within this State, pursuant to N.J.S.A. 5:12-65 and 5:12-108(f);
4. Propound written interrogatories, pursuant to N.J.S.A. 5:12-65;
5. Take official notice of any generally accepted information or technical or scientific matter in the field of gaming and of other fact which may be judicially noticed by the courts of this State, pursuant to N.J.S.A. 5:12-107(b); and
6. Permit the filing of amended or supplemental pleadings, pursuant to N.J.S.A. 5:12-107(b).

(b) In addition to any rights granted in the UAPR, the parties shall have the right to:

1. Call and examine witnesses, pursuant to N.J.S.A. 5:12-107(a)4;
2. Introduce exhibits relevant to the issues of the case, including the transcript of the testimony at any investigative hearing conducted by or on behalf of the Casino Control Commission (Commission), pursuant to N.J.S.A. 5:12-107(a)4;
3. Cross-examine opposing witnesses in any matters relevant to the issue of the case, pursuant to N.J.S.A. 5:12-107(a)4;
4. Impeach any witness, regardless of which party called him to testify pursuant to N.J.S.A. 5:12-107(a)4;
5. Offer rebuttal evidence, pursuant to N.J.S.A. 5:12-107(a)4; and

6. Stipulate and agree that certain specified evidence may be admitted although such evidence may be otherwise subject to objection, pursuant to N.J.S.A. 5:12-107(a)(7).

(c) In any contested case, the Commission shall have the authority to:

1. Grant testimonial immunity, pursuant to N.J.S.A. 52:12-67;
2. Order a rehearing, pursuant to N.J.S.A. 52:12-107(d); and
3. Certify contempt for punishment by the Superior Court, pursuant to N.J.S.A. 5:12-107(c).

SUBCHAPTER 15. EVIDENCE RULES

1:19-15.1 Special evidence rules

(a) The following special rules of evidence shall apply:

1. Any relevant evidence, not subject to a claim of privilege, may be admitted regardless of any rule of evidence which would bar such evidence in judicial matters, pursuant to N.J.S.A. 5:12-70a(6);

2. Evidence admitted pursuant to (a)1 above shall be sufficient in itself to support a finding, pursuant to N.J.S.A. 5:12-70d and 107a(6); and

3. If an applicant, licensee, registrant or person who shall be qualified pursuant to the Casino Control Act is a party and if such party shall not testify in his own behalf, he may be called and examined as if under cross-examination, pursuant to N.J.S.A. 5:12-107a(5).

CHAPTER 20. HEARINGS BEFORE THE PUBLIC EMPLOYMENT RELATIONS APPEAL BOARD CHAPTER TABLE OF CONTENTS

SUBCHAPTERS 16 THROUGH 17. (RESERVED)

SUBCHAPTER 18. CONCLUSION OF HEARING

SUBCHAPTERS 19 THROUGH 21. (RESERVED)

SUBCHAPTER 1. APPLICABILITY

1:20-1.1 Applicability

The rules in this chapter shall apply to any hearing initiated before the Public Employment Relations Commission Appeal Board pursuant to P.L. 1979, c.477 (N.J.S.A. 34:13A-5.5 et seq.). Any aspect of the 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 rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. DEFINITIONS

1:20-2.1 Definitions

(a) "Appeal Board" means the Public Employment Relations Commission Appeal Board established by N.J.S.A. 34:13A-5.6 to consider complaints concerning the amount of fees paid by nonmembers who pay a representation fee in lieu of dues.

(b) "Demand and return system" means the procedure established and maintained pursuant to N.J.S.A. 34:13A-5.6 by a majority representative to provide a public employee who pays a representation fee in lieu of dues the right to demand and receive from the majority representative that portion of the fee returnable under the circumstances as described by N.J.S.A. 34:13A-5.5(c).

(c) "Employer" means, for purposes of these rules only, the public employer which is signatory to the agreement requiring payment by the petitioner nonmember of representation fee in lieu of dues.

(d) "Nonmember" means a public employee who is not a member of the majority representative which represents the employee's collective negotiations unit but who pays a representation fee in lieu of dues to the majority representative.

(e) "Petition" means the document described in N.J.A.C. 1:20-6 and which initiates a complaint before the Appeal Board about the amount of representation fee in lieu of dues.

(f) "Petitioner" means the nonmember who is filing a petition.

(g) "Representation fee" means the fee in lieu of dues defined in N.J.S.A. 34:13A-5.5, deducted from a nonmember's wages or salary and paid to the majority representative of the nonmember's unit.

(h) "Respondent" means the majority representative which represents the petitioner's collective negotiations unit and which receives petitioner's representation fee.

SUBCHAPTER 3. COMMENCEMENT OF PROCEEDING

1:20-3.1 Commencement of proceeding before the Appeal Board

A nonmember may initiate a proceeding before the Appeal Board to review the amount of a representation fee in lieu of dues by filing a petition with the Appeal Board pursuant to this chapter.

1:20-3.2 Who may commence a proceeding before the Appeal Board

A petition may be filed by any nonmember public employee who pays a representation fee in lieu of dues to a majority representative. Neither a public employer nor a majority representative may file a petition.

SUBCHAPTERS 4 THROUGH 5. (RESERVED)

SUBCHAPTER 6. PLEADINGS

1:20-6.1 Time for filing of petition; exhaustion of demand and return system

(a) At any time after the nonmember has exhausted, or has made a good faith attempt to exhaust, the demand and return system required to be maintained by the majority representative, the nonmember may file a petition with the Appeal Board.

(b) If during the administrative processing of the petition of appeal, it is determined that the majority representative's demand and return system has either not been utilized to resolve the dispute or that the demand and return proceeding has not been completed, the Appeal Board may take whatever action it deems appropriate, including but not limited to dismissing the petition of appeal, staying the proceedings before the Board pending the completion of the majority representative's demand and return system, or continue to process the petition.

(c) A nonmember of a majority representative who has a claim pending in the majority representative's demand and return system may intervene in a proceeding before the Appeal Board involving the same majority representative, collective negotiations agreement, public employer and the same period of time, notwithstanding that the nonmember has not yet exhausted the majority representative's demand and return system.

1:20-6.2 Time for filing answer

No later than 20 days from the date of service of the petition upon the respondent by the petitioner, the respondent shall file with the Appeal Board and serve upon the petitioner an answer to the petition. For good cause, the Appeal Board may extend the time for answer. Failure to file and serve an answer on time may result in a default judgment against the respondent.

1:20-6.3 Contents of petition

(a) A petition shall be in writing and signed by the nonmember(s) making the complaint. More than one nonmember in the same negotiations unit may sign a petition.

(b) A blank form for filing such a petition will be supplied upon request. Requests shall be addressed to: Public Employment Relations Commission Appeal Board, 429 East State Street, Trenton, NJ 08608.

(c) The petition shall contain the following:

1. The full name, address and telephone number of the nonmember filing the petition and, where applicable, the name, address and telephone number of any authorized representative;

2. The full name and address of the majority representative of the nonmember's collective negotiations unit;

3. The full name and address of the public employer of the nonmember filing the petition;

4. The amount of the representation fee in lieu of dues and, where known, the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members;

5. A statement of the grounds for the nonmember's belief that the representation fee in lieu of dues is excessive or improper, including a brief recitation of the facts, if any, which give rise to the belief that the fee is excessive. It shall be sufficient for the petitioner to state opposition either to all expenditures of a political or ideological nature only incidentally related to the terms and conditions of employment, or to expenditures applied toward the costs of any benefits available only to members of the majority representative, or to both; and

6. A statement as to whether the nonmember filing the petition has exhausted the majority representative's demand and return system and the result of that proceeding. If the result of that proceeding was in written form, a copy of the writing should be appended to the petition.

1:20-6.4 Contents of answer

(a) An answer shall be in writing and signed by a representative of the respondent.

(b) An answer shall contain the following:

1. A statement of the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members in the petitioner's collective negotiations unit;

2. A statement of the representation fee in lieu of dues charged the petitioner;

3. A description of the disposition of the petitioner's demand and return system proceeding. A copy of any written decision or result of that proceeding shall be appended as an exhibit to the answer, unless it has been appended to the petition;

4. A clear and concise statement which specifically admits, denies or explains any factual allegations contained in the petition; and

5. Any affirmative defenses to the legal and factual allegations of the petition.

(c) Attached to the answer shall be:

1. A copy of the collective negotiations agreement or other written agreement with the public employer of the petitioner which provides for the payment of the representation fee in lieu of dues; and

2. A copy of the demand and return procedures established by the majority representative.

SUBCHAPTER 7. SERVICE, FILING AND POSTING OF PETITION

1:20-7.1 Filing of petition and copies

A petitioner shall file an original and four copies of the petition with the Appeal Board.

1:20-7.2 Service of petition upon majority representative

Upon filing of a petition, the petitioner shall serve a copy of the petition and any attached documents upon the respondent named in the petition. The petitioner shall file a proof of service with the Appeal Board.

1:20-7.3 Petition to public employer

Upon receipt of a petition, the Appeal Board shall forthwith provide a copy of the petition to the public employer, normally posted. The copies of the petition shall remain posted for a period of 30 days.

1:20-7.4 Filing of answer and copies

(a) The respondent shall file an original and four copies of the answer with the Appeal Board.
(b) The respondent shall file two copies of the documents required by N.J.A.C. 1:20-6.4(c).

1:20-7.5 Service of answer upon petition

Upon filing the answer, the respondent shall serve a copy of the answer and of the documents required by N.J.A.C. 1:20-6.4(c) upon the petitioner. The respondent shall file proof of service with the Appeal Board.

SUBCHAPTER 8. TRANSMISSION OF CASES

1:20-8.1 Transmission of cases to the Office of Administrative Law

In addition to the completed transmittal form, two copies of the petition and answer and other appropriate papers, the Appeal Board shall transmit to the Office of Administrative Law copies of the parties' proof of service of the petition and answer.

SUBCHAPTER 9. NOTICES

1:20-9.1 Notice of filing; employer posting

(a) In addition to the requirements of N.J.A.C. 1:1-9.4(a), a copy of the notice of filing shall be sent by the Office of Administrative Law to the public employer of the petitioner.
(b) The public employer shall post such notice at locations where notices to employees in the petitioner's collective negotiations unit are normally posted. The notice shall remain posted for a period of 30 days.

SUBCHAPTERS 10 THROUGH 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:20-14.1 Nature of hearing

The hearing shall be a plenary de novo proceeding.

1:20-14.2 Burden of proof

Pursuant to N.J.S.A. 34:13A-5.6, the burden of proof shall be on the majority representative.

SUBCHAPTER 15. EVIDENCE

1:20-15.1 Evidence of demand and return proceedings

The record, or any portion of it, developed at the demand and return system proceeding may be introduced as evidence by either party, subject to the general rules of evidence contained in N.J.A.C. 1:1-15.

SUBCHAPTERS 16 THROUGH 17. (RESERVED)

SUBCHAPTER 18. CONCLUSION OF HEARING

1:20-18.1 Oral argument on exceptions

(a) As part of any written exceptions to an initial decision, a party may file a written request for oral argument on the exceptions before the Appeal Board. The written request shall be served, along with the exceptions, upon the other parties to the hearing.

(b) If the Appeal Board grants the request for oral argument, the Appeal Board shall give each party at least five days notice of the date of the argument.

(c) Only issues and evidence of record at the hearing may be considered at the oral argument. No new issues or evidence may be presented.

1:20-18.2 Motion to reopen

A party to a proceeding before the Appeal Board may, because of extraordinary circumstances, move to reopen the matter after the Appeal Board decision has been rendered. The movant shall state with particularity the grounds claimed and, where applicable, shall specify the portion of the record relied upon. Any motion pursuant to this section shall be filed within 15 days after service of the Appeal Board decision. Copies shall be served on the parties of record, and a statement of service shall be filed with the motion papers. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Appeal Board decision unless

otherwise ordered by the Appeal Board. A motion to reopen need not be filed to exhaust administrative remedies.

SUBCHAPTERS 19 THROUGH 21. (RESERVED)

CHAPTER 21. TRADE SECRET CLAIMS
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. APPLICABILITY

1:21-1.1 Applicability

The rules in this chapter shall apply to any hearing concerning the validity of a trade secret claim. Any aspect of the 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 rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTERS 2 THROUGH 7. (RESERVED)

SUBCHAPTER 8. TRANSMISSION OF CASES TO THE OFFICE OF ADMINISTRATIVE LAW

1:21-8.1 Transmission of cases; the trade secret documentation or information

When a case is transmitted to the Office of Administrative Law involving a trade secret claim, any information or documentation which reveals the trade secret shall not be transmitted with the case file.

1:21-8.2 Custody of the trade secret information or documentation; no copying

(a) Any information or documentation which reveals the trade secret shall remain throughout the hearing in the physical custody of the representatives of the transmitting agency.

(b) When needed, upon the judge's direction, the trade secret information or documentation shall be brought to the hearing by the responsible department representatives.

(c) The trade secret information or documentation shall not be placed in the Office of Administrative Law case file and may not be copied by any Office of Administrative Law personnel.

(d) The trade secret information shall not be communicated over telecommunication networks, including but not limited to: telephones, computers connected by modems, or electronic mail systems.

(e) The judge may, when necessary for the performance of his or her functions, disclose the trade secret information to his or her secretary.

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:21-10.1 Discovery in trade secret cases

(a) When necessary to prevent the trade secret from being disclosed without authorization, the judge may order:

1. That the requested discovery not be had;

2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

3. That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

5. That discovery be conducted with no one present except persons designated by the judge;

6. That a deposition after being sealed be opened only by order of the judge;

7. That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judge; or

8. Any other device which reasonably balances the discovery goal of minimizing surprise at hearings with the need to protect the trade secret from an unauthorized disclosure.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:21-12.1 Written motions

Written motions shall be made directly to the judge.

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF TRADE SECRET CASE

1:21-14.1 Sound recordings; safeguarding the case file and sound recordings; preparation of transcripts

(a) Court reporters will not be provided for trade secret hearings. A verbatim record will be maintained by sound recording.

(b) When not in use, all audio tapes and case files together with all evidence and other related case materials, including any transcripts, shall be locked in an Office of Administrative Law filing cabinet in a locked room, whether or not particular tapes, case files, evidence or related materials include secret testimony or argument. Access to the file cabinet shall be limited to judges and their secretaries. Access to the locked room shall be restricted to a person or persons designated by the Director in writing. A record of access to the file cabinet shall be maintained by the designated persons.

(c) No duplicates or copies of any portion of an audio tape containing secret information shall be permitted.

(d) Upon the request of a person who is authorized by the judge to receive a transcript, the judge's secretary shall prepare a transcript of that portion of the hearing dealing with the secret information. A transcribing firm may be authorized to prepare a transcript of that portion of the hearing not dealing with the secret information.

1:21-14.2 Sealing the record

(a) On the last day of the evidentiary hearing, the parties shall be given the opportunity to address the record sealing requirements of the case. The record shall be sealed by order attached to the initial decision in every trade secret case.

(b) In rendering a sealing order, the judge shall consider the extent of restriction necessary to safeguard the trade secret and shall determine in each such order:

1. That the Office of Administrative Law shall not maintain a duplicate case file after the initial decision has been provided to the parties and agency head; and
2. That all documents transmitted to the Office of Administrative Law together with all evidence received at the hearing and all audio tapes or transcripts, if any, shall be returned to the transmitting agency with the initial decision; and
3. That all requests for transcripts prior to the initial decision shall be directed to the judge and that all requests for transcripts after the initial decision shall be directed to the transmitting agency; and
4. Whether any portions of the audio tapes of the proceeding may not be transcribed or whether other means of safeguarding the trade secret can be utilized when preparing a transcript; and
5. The names of persons who are authorized to request a transcript; and
6. Whether the entire initial decision, transcript, audio tapes, evidence and other related case materials or any part thereof must be marked "CONFIDENTIAL" and distributed by hand or certified mail in a plain envelope addressed only to a person authorized to receive the secret information; and
7. Whether the initial decision or any part thereof may be made available to the public in any agency's library.

1:21-14.3 Exceptions to the public hearing policy

When necessary to prevent the trade secret from being disclosed without authorization, the judge may make an exception to the public hearing requirements of N.J.A.C. 1:1-14.1 and he or she may close the hearing, or any part thereof, and exclude witnesses, or, if necessary, parties from portions of the hearing.

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

SUBCHAPTER 18. INITIAL DECISIONS; RETURNING THE CASE TO THE TRANSMITTING AGENCY

1:21-18.1 Delivery of initial decisions, transcripts, audio tapes, evidence and other related case materials

(a) Unless the judge otherwise directs in the record sealing order (see N.J.A.C. 1:21-14.2), the parties to the case and the transmitting agency or their designated representatives will be telephoned and asked to pick up the initial decision at the judge's chambers at the Office of Administrative Law. The indicated date of receipt by the agency head, as required by N.J.S.A. 52:14B-10(c), shall be the second day after the Office of Administrative Law telephones the transmitting agency.

(b) Unless the judge otherwise directs in the record sealing order, the transmitting agency will be telephoned and asked to pick up at the Office of Administrative Law the transcript, if any, audio tapes, evidence and other related case materials on the same date it is requested to pick up the initial decision.

(c) After returning the case to the transmitting agency, the Office of Administrative Law may maintain in the Clerk's file only the transmittal form, the notices of filing and hearing and the order sealing the record.

SUBCHAPTERS 19 THROUGH 21. (RESERVED)

CHAPTER 30. RULES FOR AGENCY RULEMAKING
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 6. PROCEDURE UPON ADOPTION

SUBCHAPTER 1. GENERAL PROVISIONS

1:30-1.1 Short title

The provisions of this chapter shall be known as "The rules for agency rulemaking".

1:30-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

"Administrative correction or change" means a correction or change to the text of a rule without formally promulgating the amendment (see N.J.A.C. 1:30-2.7).

"Adopt" means the action whereby a rule is officially approved and authorized for promulgation by an adopting agency.

"Adopting agency" means that agency authorized by law to conduct a rulemaking proceeding.

"Agency" or "State agency" is defined in N.J.S.A. 52:14B-2(a).

"Adopting agency head" means either that person designated by statute as authorized to promulgate rules, or the principal executive officer or an authorized adopting agency.

"Amend" means to modify, alter, revise or suspend the operative effect of a previously promulgated rule.

"Appendix" means any collateral material which serves to clarify, illustrate, or explain a rule.

"Code" means the New Jersey Administrative Code, published pursuant to N.J.S.A. 52:14B-7(a).

"Codify" means to devise, pursuant to N.J.S.A. 52:14B-7(f), the form in which rules are published to achieve a logical and consistent arrangement of the provisions.

"Director" means the Director of the Office of Administrative Law.

"Division of Administrative Rules" means that Division of the Office of Administrative Law to which documents shall be submitted for publication in the New Jersey Register; which reviews such documents for compliance with this chapter and the Act; which maintains permanent records concerning rule promulgation; and which provides assistance to agencies concerning the preparation, consideration, publication and interpretation of rules.

"Document" means any writing submitted to the Office of Administrative Law by an agency for the purpose of filing, publishing, or other processing pursuant to law. The singular of this term refers to the entirety of each writing although such writing establishes or affects more than one rule or subject matter, or consists of more than one page or part.

"Effective" means that a rule, pursuant to the Constitution, the Act and this chapter, has been duly adopted, filed with the Office of Administrative Law, and in the case of a new rule, amendment, or repeal, promulgated in the New Jersey Register. A readoption is effective upon timely filing with the OAL.

"Emergency adoption" means the promulgation of an amendment, repeal or new rule without public comment in response to an imminent peril to the public health, safety and welfare (see N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-6.5).

"Executive Order No. 27(1994)" means the 27th executive order issued by Governor Whitman in 1994. Commonly referred to as the "Federal standards" provision, the executive order requires a

statement or analysis as to whether a rule exceeds standards or requirements imposed by Federal law. Federal law includes statutes, rules, regulations, orders, directives or guidelines.

"Exempt agency" means any agency excluded from the requirements of the Administrative Procedure Act because it does not meet the definition of "agency" in N.J.S.A. 52:14B-2(a).

"Exempt rule" means any rule of an exempt agency or a rule of a non-exempt agency which, pursuant to N.J.S.A. 52:14B-5.1e, does not require an expiration date.

"File" means the action whereby a copy of a document is received by the Division of Administrative Rules; stamped with the date and time of receipt; entered into the registry; and thereafter accepted for publication by the Director. All documents accepted for publication shall be considered filed as of the date of receipt.

"Intra-agency statement" means a communication between members of a single agency that does not substantially impact upon the rights or legitimate interests of the regulated public.

"Inter-agency statement" means a communication between separate agencies that does not substantially impact upon the rights or legitimate interests of the regulated public.

"Joint proposal and joint adoption" is the process by which two or more agencies, with concurrent or complementary jurisdiction, jointly propose and adopt identical rules, at the same time. The process may be mandated by legislation or voluntarily initiated, where appropriate.

"Negotiating a rule" means the process whereby an agency requests, and the OAL provides a representative to conduct a preliminary, non-adversarial proceeding with respect to a contemplated rulemaking proceeding, and which results in a rule presented to the "adopting agency" head in the form required by N.J.A.C. 1:30-5.1.

"Notice of petition for rulemaking" means that document described in N.J.A.C. 1:30-4.1 which must be submitted to the Office of Administrative Law for publication in the Register when a request for agency rulemaking action is made by an interested person, pursuant to N.J.S.A. 52:14B-4(f).

"Notice of pre-proposal" means that document described in N.J.A.C. 1:30-5.3 which must be submitted to the Office of Administrative Law for publication in the New Jersey Register, when an agency determines to conduct, pursuant to N.J.S.A. 52:14B-4(e), a preliminary proceeding with respect to a contemplated rulemaking proceeding or when, pursuant to N.J.A.C. 1:30-5.3, a pre-proposal shall be submitted.

"Notice of proposal" means that document described in N.J.A.C. 1:30-5.1 which must be submitted to the Office of Administrative Law for filing and then published in the New Jersey Register and distributed to the Legislature and interested persons.

"Operative" means that the adopting agency shall enforce and the affected public shall obey the terms of an effective rule. Unless otherwise specified in the rule, a rule becomes operative when effective.

"Organizational rule" means a rule promulgated pursuant to N.J.S.A. 52:14B-3(l), including a description of the structure of the agency; the persons from whom and places from which information, applications and other forms may be obtained; and the persons to whom and places to which applications, requests and other submissions may be made.

"Person" means any natural individual, association, board, venture, partnership, corporation, organization, institution and governmental instrumentality recognized by law for any purpose whatsoever.

"Pre-proposal" means a preliminary proceeding for the purpose of eliciting ideas, views and comments of interested persons on a contemplated rulemaking proceeding, pursuant to N.J.A.C. 1:30-5.3(b). This preliminary proceeding precedes the filing of a formal rule proposal.

"Promulgate" means to proclaim officially in the Register and thereby render effective a new rule, amendment or repeal which was duly adopted by an agency and filed with the Office of Administrative Law.

"Propose" means the action whereby an adopting agency submits a notice of proposed rule to the Office of Administrative Law for filing and publication by the Director.

"Public hearing" means a legislative type proceeding conducted either as part of a rulemaking or to consider a possible rulemaking which affords the public an opportunity to present to the promulgating agency oral and written comments, arguments, data and views on the rulemaking or the contemplated rulemaking.

"Readopt" means to conduct a rulemaking proceeding for the purpose of continuing in effect an emergency rule which would otherwise expire pursuant to N.J.S.A. 52:14B-4(c) (see N.J.A.C. 1:30-6.5), or a rule which expires pursuant to N.J.S.A. 52:14B-5.1 (see N.J.A.C. 1:30-6.4). In a rulemaking proceeding to readopt a rule, the rule continues in effect upon the timely filing of the notice of adoption with the Office of Administrative Law.

"Register" means the "New Jersey Register" published pursuant to N.J.S.A. 52:14B-7(b).

"Registry" means the serial list of documents submitted for filing with the Director.

"Repeal" means to conduct a rulemaking proceeding to declare void a rule, the effect of which is to terminate the legal effect of such rule prospectively only. Any rule so terminated shall continue thereafter to be enforced in and applied to all proceedings, formal or otherwise, initiated pursuant to rule or to law prior to the effective date of such repeal.

"Rule" or "administrative rule" is defined in N.J.S.A. 52:14B-2(e). For purposes of determining effective dates, there are five types of rules: new rules, amendments, repeals, readoptions, and emergency rules.

"Rule activity" means any agency action with respect to a rule authorized or required by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and including a petition for a rule, a pre-proposal for a rule, and rulemaking proceeding.

"Rulemaking proceeding" means those steps which shall be followed pursuant to the Act and this chapter, for a rule to be validly promulgated, and which include the procedures for proposal of a rule, N.J.A.C. 1:30-5, the proper adoption of a rule, and the procedures upon adoption of a rule, N.J.A.C. 1:30-6.

1:30-1.3 Offices

(a) The Division of Administrative Rules, Office of Administrative Law, is located at Quakerbridge Plaza, Building No. 9, PO Box 049, Quakerbridge Road, Trenton, New Jersey 08625-0049.

(b) Hours during which documents may be submitted or reviewed are from 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

(c) Information may be obtained by telephoning the following for:

1. Rulemaking information (609) 588-6614;
2. Document filings (609) 588-6613 or 6606; and

3. Administrative Code research (609) 588-6613 or 6606.

1:30-1.4 Citations to the Code

(a) The New Jersey Administrative Code shall be cited as "N.J.A.C."
(b) The citation of a particular section of the New Jersey Administrative Code shall include the numerical designations of the title, chapter, subchapter and section referred to, preceded by the initials N.J.A.C. As an example, this section would be cited as N.J.A.C. 1:30-1.4.

1:30-1.5. Citations to the Register

(a) The New Jersey Register shall be cited as "N.J.R."
(b) The citation to material appearing in the New Jersey Register shall include the volume number, page number and item letter, the volume and page numbers being separated by the initials, "N.J.R." As an example, the second item of page 20 of the January 3, 1995 issue would be cited as 27 N.J.R. 20(b).

1:30-1.6 Statutory citations in the Code

Statutory citations will be "N.J.S.A.", the New Jersey Statutes Annotated. This is for the convenience of the public, but the official copy of any statute will be found in the State's unpublished compilation of statutes or in the published yearly pamphlet laws.

1:30-1.7 Use of headings

Title, subtitle, chapter, subchapter, section, article, group, part and division headings contained in the Register or Code are not part of the rule, but are intrinsic parts of the publication. As such, these headings may be used in interpreting the rule.

1:30-1.8 Access to documents

(a) Every document or a copy thereof submitted to the Office of Administrative Law for filing shall be maintained on record by the Division of Administrative Rules.
(b) Any person shall, upon request, be afforded an opportunity to examine any document maintained by the Division of Administrative Rules during business hours 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

1:30-1.9 Copies of documents; fees

(a) Any person may obtain copies of filed documents from the Division of Administrative Rules pursuant to the provisions of N.J.S.A. 47:1A-2 upon payment of a fee as follows:
1. First page to 10th page: $ .75 per page;
2. Eleventh page to 20th page: $ .50 per page;
3. All pages over 20: $ .25 per page.

(b) Original filed documents shall not be released from the custody of the Office of Administrative Law.

1:30-1.10 Forms

From time to time the Office of Administrative Law may adopt as interagency statements the forms and formats which shall be used in rule activities.

1:30-1.11 (Reserved)

1:30-1.12 Compliance

(a) Upon an initial determination by the OAL that any proposed or adopted rule, pre-proposal for a rule or any notice is not in compliance with the technical or procedural requirements concerning rulemaking, the OAL may temporarily suspend the processing of that document. In such situations, the OAL shall contact the agency to indicate the basis for the initial determination of non-compliance. The OAL and the agency shall mutually review the initial determination. The OAL shall assist the agency in a cooperative effort to obtain compliance.

(b) Upon a determination by the Director that a proposed or adopted rule, a pre-proposal for a rule, or a notice does not satisfactorily comply with these rules for agency rulemaking, the OAL shall not process for publication the proposed or adopted rule, pre-proposal for a rule or any notice.

(c) If the OAL determines that there is an issue of non-compliance which concerns statutory authority, related legal issues, or contested case jurisdiction, it may refer the matter to the Office of the Attorney General for advice.

1:30-1.13 Invalidation of rule

In the event that a proposed or adopted rule is suspended or otherwise rendered inoperative or ineffective by Court rule or ruling, by legislative action or by Executive Order, the Office of Administrative Law shall, upon receipt of notice of the event, prepare and publish a notice in the Register and the Code, as appropriate.

1:30-1.14 Publication filing deadlines

(a) Pursuant to N.J.S.A. 52:14B-7(c), the Director will issue annually a schedule for the filing of documents for publication in the New Jersey Register. The schedule will set forth, for each Register to be published in the following year, the issue publication date, the deadline dates for the filing of proposal and adoption notices, and the minimum 30-day comment deadline for proposals. Notices of proposal and pre-proposal, of proposal comment period extensions and of proposal public hearings shall be filed on or before the proposal filing deadline. Other notices shall be filed on or before the adoption deadline.

(b) The filing deadline for the inclusion of a document in a particular issue of the Register is on or before 12:00 P.M. (noon) on the proposal or adoption date, as appropriate, specified in the publication schedule. Documents filed after the deadline will be included in the filed-for Register

issue at the discretion of OAL. OAL's decision to include a late-filed document will be based upon the length and anticipated complexity of the document, the volume and anticipated complexity of documents timely filed, and availability of staff. Once a determination is made as to the Register issue in which a late-filed document will be published, OAL shall so advise the agency.

1:30-1.15 Filing of a document

(a) Upon receipt of a document for filing, there shall be stamped on its face the following:
1. The hour and date of receipt; and
2. The word "received".
(b) Upon acceptance for publication, the document shall be stamped filed and is deemed filed as of the date of receipt.
(c) All proposals shall be assigned a proposed rule number (PRN) by the Division of Administrative Rules. All adoptions shall be assigned a rule document number (R.d.) by the Division of Administrative Rules.

SUBCHAPTER 2. RULEMAKING GENERALLY

1:30-2.1 Clarity of rules

(a) In order to be accepted for filing, a document shall be written in a reasonably simple and understandable manner which is easily readable.
1. The document shall be drafted to provide adequate notice to:
i. Affected persons; and
ii. Interested persons with some subject matter expertise.
2. The document shall conform to commonly accepted principles of grammar.
3. The document shall contain sentences that are as short as practical, and be organized in a sensible manner.
4. The document shall not contain double negatives, confusing cross references, convoluted phrasing or unreasonably complex language.
5. Terms of art and words with multiple meanings that may be misinterpreted shall be defined.
6. The document shall be sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, readoption or amendment of the rule or regulation.
(b) Any rule activity or notice which does not comply with the standard of clarity set forth in (a) above shall be subject to the provisions of N.J.A.C. 1:30-1.12.
(c) The provisions of (a) above shall not apply to any administrative rule that a State agency adopts to conform to a model code, Federal rule, interstate agreement or other similar regulatory measure not written by the State agency but incorporated into an administrative rule. The State agency shall include in the Summary of the notice of proposal for such rule a description of the rule which complies with (a) above. For a regulatory measure incorporated by reference, as amended and supplemented, into a rule, in accordance with N.J.A.C. 1:30-2.2(c)1ii, the requirement for a notice of proposal Summary description in compliance with (a) above shall apply only to the notice of proposal in which the initial incorporation by reference was proposed.

(d) The Governor may, upon written request of a State agency, waive the requirements of this section with respect to the readoption, without amendment, of any rule or provision of a rule.

1:30-2.2 Incorporation by reference

(a) Specifically designated sections of the following sources may be incorporated into a rule by reference:

1. New Jersey Statutes Annotated;
2. United States Code;
3. New Jersey Session Laws;
4. Code of Federal Regulations;
5. Federal Register;
6. Any uniform system of accounts published by the National Association of Regulatory Utility Commissioners;
7. Any generally available standard published by any of the standardizing organizations listed in the National Bureau of Standards Special Publication 417, Director of United States Standardization Activities or supplements thereto or reissues thereof; or
8. Any other generally available publication approved by the Director.

(b) Any section of a source incorporated by reference shall be made available for public inspection by the adopting agency and shall be available in printed form from the adopting agency or the original source for a reasonable fee.

(c) Any agency incorporating any section of a source by reference shall adopt and file as a rule appropriate language indicating:

1. What is incorporated including either:

i. The specific date or issue of the section of the source incorporated; or

ii. A statement indicating whether the section incorporated includes future supplements and amendments.

2. Where and how a copy of the section may be obtained.

(d) Where a State agency rule elaborates on, or summarizes or paraphrases a State or Federal statute or Federal regulation, the rule shall contain a citation of or reference to that statute or regulation.

1:30-2.3 Single subject for each section

Each proposed or adopted section shall embrace but one subject, and that shall be expressed in the section heading.

1:30-2.4 Authorization for rule activity

(a) A notice of adoption shall be signed by the adopting agency head, or any other person authorized by statute.

(b) A notice of proposed rule or any other rule activity shall be signed either by:

1. The adopting agency head; or

2. By an agency employee who has been duly authorized by the agency head to propose rules, and for whom a written authorization signed by the agency head has been submitted to the Office of Administrative Law.

(c) Any rule activity not properly authorized shall be returned to the agency.

1:30-2.5 Effect of statement for proposed rule

The statements for a proposed rule (N.J.A.C. 1:30-5.1(c)) and for any change upon adoption of a rule (N.J.A.C. 1:30-6.1(b)12 through 15) are not part of the rule, but are intrinsic parts of the proposal and adoption as published in the Register. As such, these statements may be used in interpreting the rule.

1:30-2.6 Official copy of proposed, adopted and promulgated rule

(a) The Register constitutes the authoritative text of any notice printed therein.

(b) The full text printed in the Register of any proposed rule, adopted rule or any change made upon adoption of a proposed rule, constitutes the authoritative text of that proposed rule, adopted rule or change. An official copy of the text printed in the Register shall be kept on file by the OAL.

(c) Where the full text of an adopted rule is not printed in the Register, the full text of the proposed rule printed in the Register, plus the full text of any change printed in the Register upon adoption, constitutes the authoritative text of the adopted and promulgated rule. An official copy of the text printed in the Register shall be kept on file by the OAL.

(d) Where the full text of any proposed rule, adopted rule, or change is not printed in the Register, the authoritative text is the copy submitted by the adopting agency and kept on file by the Office of Administrative Law.

1:30-2.7 Administrative corrections and changes

(a) Upon being advised in writing by an agency or upon its own initiative, with notice to the appropriate agency, the OAL may make an administrative correction or change to any rule published in the New Jersey Register or New Jersey Administrative Code. An administrative correction or change shall be effective upon filing with the OAL.

(b) An administrative correction may be made to correct an error which is obvious, easily recognizable, or apparent to the promulgating agency and the regulated public. An administrative correction may be made to conform a proposed or adopted rule to the intent of the agency as expressed in the proposal or adoption statements. Administrative corrections may be made to correct any part of a rule including, but not limited to, its text, spelling, grammar, punctuation, codification, and cross-references.

(c) An administrative change may be made to recodify a rule. Administrative changes may also be made to amend a rule to provide the public with notice of nonregulatory changes that have occurred since the rule was adopted. Administrative changes may include, but are not limited to, changes in:

1. Names of departments, agencies, divisions and bureaus;
2. Titles of specific individuals; and

3. Addresses, phone numbers and business hours.

(d) An administrative correction or change shall not be used to adjust the text of a rule to subsequent changes in circumstance or policy decisions.

(e) Notice of administrative correction or change shall be published in the New Jersey Register. The administrative correction or change with appropriate annotation shall be included in a subsequent supplement to the New Jersey Administrative Code.

1:30-2.8 Appendices

(a) Appendices shall include only material which clarifies, illustrates or explains a rule. An appendix may include, but is not limited to, the following:

1. Technical requirements or specifications;
2. Instructions;
3. Formulae;
4. Forms;
5. Examples of hypothetical cases;
6. Reprints of regulations, statutes, forms, etc., which originate elsewhere;
7. Lists of offices, their addresses and hours of business; and
8. Analyses or explanatory material regarding a rule, which may contain a rationale or derivation of the rule.

(b) Any material, such as but not limited to, that in (a)1 through 8 above which is non-regulatory may be included in an appendix and cross-referenced in the text of a rule.

(c) Any material, such as, but not limited to, that listed in (a)1 through 8 above which is regulatory may be included in an appendix as long as the appendix is incorporated by reference in the text of a rule. Any amendment to the appendix shall therefore be through rulemaking.

(d) The Office of Administrative Law shall, pursuant to N.J.S.A. 52:14F-5 and N.J.S.A. 52:14B-7(c) and (f), determine:

1. Whether any regulatory provisions found in an Appendix shall be integrated and/or codified into the text of a rule; and
2. The location of an Appendix to a rule in the New Jersey Register and the New Jersey Administrative Code; and
3. Whether an Appendix should be published in the New Jersey Register and the New Jersey Administrative Code.

(e) This section shall be applied prospectively; however, if existing appendices or rules to which they refer are subsequently amended after August 15, 1988, those appendices and rules shall then be conformed to comply with this section.

1:30-2.9 Organizational rule; rules of practice

(a) Each agency shall:

1. Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests; and

2. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency, and, if not otherwise set forth in an agency's rules, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures.

i. As used in this paragraph, "permit" means any agency license, permit, certificate, approval, charter, registration or other form of permission required by law.

SUBCHAPTER 3. RULEMAKING CALENDARS

1:30-3.1 Publication of rulemaking calendars

(a) Each agency shall publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rulemaking notice of proposal activities for the next six months. The calendars shall be published in the first New Jersey Register for the months of January, April, July and October and shall be filed with OAL in accordance with the OAL publication schedule (see N.J.A.C. 1:30-1.14) on or before the filing deadline for notices of proposal.

(b) The calendar shall include:

1. The name of the agency;
2. The name of the agency head;
3. Specific citation to the rules to be affected;
4. Citation to the legal authority authorizing the rulemaking action;
5. A synopsis of the rulemaking and its objective or purpose; and
6. The month and year in which publication of the notice of proposal in the New Jersey Register is anticipated.

1:30-3.2 Calendar amendment

(a) An agency shall notify the Director of the Office of Administrative Law when it wishes to amend its calendar of rulemaking activities. Such notice shall be in the form of a revised version of the rulemaking calendar published most recently prior to the amendment, and shall highlight the amendment, both in an explanatory statement and the appearance of the amendment text (additions in boldface, deletions in brackets) within the calendar. Notices of calendar amendment shall be filed with the OAL in accordance with the deadlines for filing notices of proposal set forth in the OAL publication schedule. An agency shall take no action on an amended rulemaking activity until at least 45 days following the first publication of the amended calendar in which the announcement of that amended rulemaking activity appears, if an amendment:

1. Involves the addition of any rulemaking activity to an agency's calendar;
2. Changes the anticipated month of proposal publication to an earlier month; or
3. Alters the objective, purpose or subject matter synopsis of the rulemaking so as to change who or what shall be affected by the rulemaking and/or how they shall be affected.

(b) If a calendar amendment under (a)1 through 3 above appears initially in an agency's quarterly rulemaking calendar, an agency shall take no action on that amended rulemaking activity until at least 45 days following the publication of the quarterly calendar.

1:30-3.3 Exceptions

(a) The provisions of N.J.A.C. 1:30-3.1 and 3.2 shall not apply to rulemaking:

1. Required or authorized by Federal law, when failure to adopt rules in a timely manner will prejudice the State;

2. Subject to a specific statutory authorization requiring promulgation in a lesser time period than addition to a calendar would permit;

3. Involving an imminent peril subject to provisions of N.J.S.A. 52:14B-4(c);

4. For which the agency has published a notice of pre-proposal of the rule in accordance with N.J.A.C. 1:30-5.3(b) and (c); or

5. For which a comment period of at least 60 days is provided.

(b) A proposed rule falling within any of the exceptions in (a) above shall so indicate in the Summary of notice of proposal. If the rule falls under the exception in (a)1 above, the Summary shall include the specific citation of the Federal law requiring or authorizing the rule, and an explanation as to how failure to adopt the rule in a timely manner will prejudice the State.

1:30-3.3A (Reserved)

1:30-3.4 Calendar copies

(a) Each agency shall include, in that portion of its Internet web site concerned with rulemaking, either its rulemaking calendar or a notice of the availability of its rulemaking calendar for the fee established at (c) below. If an agency's web site does not feature a portion devoted to rulemaking, the calendar or notice of the availability of the rulemaking calendar shall be included in that portion of the web site otherwise used for public notices and/or information.

(b) In addition to the notice under (a) above, an agency shall provide notice of the availability of its rulemaking calendar for the fee established under (c) below in the same manner as it publicizes its proposed rulemakings under N.J.A.C. 1:30-5.2(a)6.

(c) Agencies shall charge a fee for copies of their rulemaking calendars in accordance with the copying fee schedule at N.J.A.C. 1:30-1.9(a).

1:30-3.5 (Reserved)

1:30-3.6 (Reserved)

1:30-3.7 (Reserved)

SUBCHAPTER 4. PETITION FOR RULEMAKING

1:30-4.1 Notice of petition for rulemaking

(a) An interested person may petition an agency to adopt a new rule or amend or repeal an existing rule.

(b) Each agency shall adopt a rule prescribing the form and procedures for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely: the substance or nature of the rulemaking which is requested; the reasons for the request and the petitioner's interest in the request; and references to the authority of the agency to take the requested action. The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.

(c) When a person petitions an agency to begin a rulemaking proceeding, the agency shall, within 15 days of receipt of the petition, file with the Office of Administrative Law for publication in the Register a notice of the petition's receipt. The notice of petition shall include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

1:30-4.2 Agency response to petition

(a) Within 60 days of receipt of a rulemaking petition, the agency shall either:

1. Deny the petition, in which case the agency shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;

2. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or

3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral. Upon conclusion of such further deliberations, the agency shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days. The agency shall mail the results of these further deliberations to the petitioner and submit the results to the OAL for publication in the Register.

(b) A specific period of more than 90 days for further deliberations under (a)3 above and/or to initiate a rulemaking proceeding under (a)2 or 3 above may be agreed upon, in writing, by the petitioner and the agency. An agreement to extend either period, or both periods, shall constitute an action on the petition subject to the notice requirements of (d) below.

(c) As used in this section, "initiate a rulemaking proceeding" means the submission of a notice of proposal to the Office of Administrative Law for publication in the next available issue of the New Jersey Register.

(d) Within 60 days of receiving the petition, the agency shall mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which shall include:

1. The name of the petitioner;
2. The Register citation for the notice of petition;
3. The signature of the agency head, signifying that the petition was duly considered pursuant to law;
4. The nature or substance of the agency action upon the petition; and
5. A brief statement of reasons for the agency action.

1:30-4.3 Failure to respond to petition

(a) If an agency fails to act in accordance with the time frames set forth in N.J.A.C. 1:30-4.2(a), the petitioner may request, in writing, a public hearing on the petition by submitting a request to the Director of the Office of Administrative Law. In order to be considered, such written request must be received by the Director of the Office of Administrative Law prior to the receipt by the Office of Administrative Law of a notice of proposal initiating rulemaking in furtherance of the granting of the petition.

(b) Upon receipt of a request for a hearing, the Director shall order a public hearing on the rulemaking petition. The Director shall provide the agency with a notice of the Director's intent to hold the public hearing if the agency does not.

(c) If the agency does not provide notice of a public hearing within 15 days of issuance of the Director's notice, the Director shall schedule a public hearing to be conducted by the Office of Administrative Law. Notice of that hearing shall be provided to the petitioner and the public at least 15 days prior to the hearing.

(d) If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to N.J.S.A. 52:14F-5, or an independent contractor assigned by the Director.

(e) The petitioner and the agency shall participate in the public hearing. At the hearing, they shall present a summary of their positions on the petition and a summary of the factual information on which their positions on the petition are based. They also shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in N.J.A.C. 1:30-5.5(d), except that, within 90 days after the hearing, the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition.

(f) The report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rulemaking.

1:30-4.4 (Reserved)

1:30-4.5 (Reserved)

1:30-4.6 (Reserved)

1:30-4.7 (Reserved)

SUBCHAPTER 5. PROPOSAL PROCEDURE

1:30-5.1 Notice of proposed rule

(a) Where the law requires that an agency give notice of its rulemaking proceedings, the agency shall prepare a "notice of proposal" and submit the notice to the OAL. The notice of proposal shall comply with the requirements of this section.

(b) The notice of proposal shall include a heading, that shall include, in the following order:

1. The heading of the Administrative Code Title affected (for example, the heading of Title 19 is "Other Agencies");

2. The element within the proposing agency (for example, the Division or Bureau) originating the notice;

3. A caption describing the subject matter of what is proposed;

4. A suggested N.J.A.C. citation for any proposed new rule and the existing citation for any rule(s) proposed for amendment, repeal or readoption;

5. After "Authorized By:", the name of the adopting agency head and agency and the signature of the adopting agency head or other authorized signatory as provided in N.J.A.C. 1:30-2.4;

6. After "Authority:", a citation to the specific N.J.S.A. statutory authority for the proposal or the Public Law number if an N.J.S.A. citation is unavailable. An agency may not cite its general statutory authority unless specific legal authority is unavailable and the agency is relying on its general or residual powers, in which case a statement to that effect shall be made in the Summary;

7. After "Calendar Reference:", the New Jersey Register publication date and citation of the rulemaking calendar most recently prior to the anticipated publication date of the notice of proposal.

i. If the rulemaking is excepted from the prior calendar listing requirement under N.J.A.C. 1:30-3.3(a), this heading item shall reference the notice Summary. The Summary shall contain the explanation of the exception required under N.J.A.C. 1:30-3.3(b). For example, the heading item may read, "Calendar Reference: See Summary below for explanation of exception to calendar requirement.";

8. An item headed "Proposal Number:" which shall be completed by OAL; and

9. An announcement of the public's opportunity to be heard regarding the proposal, which shall include:

i. When, where, and how persons may present their views orally or in writing;

ii. When and where persons may attend any formal rule adoption proceeding;

iii. The name, address and telephone number of the person(s) to receive written or oral comments; and

iv. If the agency chooses to accept comments electronically, a facsimile telephone number (FAX number) and/or e-mail address.

(c) The notice of proposed rule shall include a brief statement of the proposed rulemaking, which shall include, in the following order:

1. A summary statement of the proposed rulemaking with a clear and concise explanation of its purpose and effect. The summary shall describe, detail and identify:

i. Who and what will be affected by the proposal;

ii. How, when and where the effect will occur;

iii. What the proposal prescribes, proscribes or otherwise mandates;

iv. What enforcement mechanisms and sanctions may be involved; and

v. Any other relevant or pertinent information;

2. A social impact statement which describes the expected social impact of the proposed rulemaking on the public, particularly on any segments of the public proposed to be regulated, and including any proposed or expected differential impact on different segments of the public, including the rulemaking action, and justification therefore;

3. An economic impact statement which describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, and particularly any segments of the public proposed to be regulated;

4. A Federal standards statement or analysis which addresses whether the rules in the notice of proposal contain standards or requirements that exceed standards or requirements imposed by Federal law. The analysis shall apply to any new, readopted or amended rule under the authority of or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

i. Rules which are not subject to any Federal standards or requirements shall be accompanied by a statement to that effect and that a Federal Standards Analysis is not applicable to the rulemaking.

ii. Rules which contain standards or requirements that do not exceed or are the same as Federal standards or requirements shall be accompanied by a statement which cites the Federal standards or requirements and states that the standards or requirements of the rule do not exceed or are the same as those imposed by Federal law.

iii. Rules which exceed standards or requirements imposed by Federal law, notwithstanding the Federal government's determination that lesser standards or requirements are appropriate, shall be accompanied by an analysis which contains the following:

(1) A discussion of the agency's policy reasons for imposing standards or requirements which exceed those required by Federal law;

(2) A cost-benefit analysis that supports the agency's decision to impose standards or requirements which exceed those required by Federal law;

(3) A discussion which supports the fact that the agency standard or requirement to be imposed is achievable under current technology; and

(4) A certification by the agency head that the analysis permits the public to understand accurately and plainly the purposes and expected consequences of the new, readopted or amended rule;

5. A jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect;

6. An agriculture industry impact statement setting forth the nature and extent of the impact of the proposed rule on the agriculture industry;

7. A regulatory flexibility statement or analysis:

i. All rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include a regulatory flexibility analysis which describes the methods utilized to minimize any adverse economic impact on small businesses.

ii. "Small business" means any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and which employs fewer than 100 full time employees.

iii. Rules which do not impose reporting, recordkeeping or other compliance requirements on small businesses shall be accompanied by a regulatory flexibility statement which indicates that no such requirements are imposed, and the basis for that finding.

iv. Rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include in the regulatory flexibility analysis with as much quantification as is practical or reliable, the following:

(1) A description of the types and an estimate of the number of small businesses to which the rule will apply;

(2) A description of the reporting, recordkeeping and other compliance requirements, and the kinds of professional services likely to be needed to comply with the requirements;

(3) An estimate of the initial capital costs, and an estimate of the annual compliance costs, with an indication of any likely variation on small businesses of differing types and sizes; and

(4) An indication of how the rule is designed to minimize any adverse economic impact on small businesses.

v. To indicate how the rule is designed to minimize any adverse economic impact on small businesses, the following approaches shall be considered in the regulatory flexibility analysis:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account resources available to small businesses;

(2) The use of performance rather than design standards; and/or

(3) An exemption from coverage by all or part of the rule, provided that the public health, safety or general welfare is not endangered. A finding of endangerment shall explain the relationship between the regulatory requirement that cannot be exempted and the public health, safety or general welfare.

vi. The regulatory flexibility analysis in (c)7iv and v above shall be required whenever small businesses comprise part of, or the entire, regulated group on which reporting, recordkeeping or other compliance requirements are imposed; and

8. A smart growth impact statement which shall describe the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

(d) The notice of proposal shall include the full text of the proposed new rule, amendment, repeal or readoption, specifically indicating additions and/or deletions of any rule being repealed or recodified.

1:30-5.2 Publication and distribution of notice of proposal

(a) Upon OAL's receipt of a notice of proposal which conforms to the requirements of N.J.A.C. 1:30-5.1:

1. The OAL shall submit, within two business days, the notice, other than a notice of a Federally required rule (see N.J.A.C. 1:30-3.7), to the Senate and the General Assembly;

2. The OAL shall publish the notice of proposal in the next available issue of the New Jersey Register. Pursuant to N.J.S.A. 52:14B-7(c), any notice of proposal which would be cumbersome, or unduly expensive to publish, shall not be printed in full. Instead, such notices shall be summarized in the Register. The proposing agency shall make available the notice of proposal and provide in the published notice the manner in which, and from where, copies may be obtained;

3. The agency shall mail either the notice of proposal, as filed, or a statement of the substance of the proposed action to those persons who have made timely request of the agency for notice of its rulemaking actions;

4. The agency shall distribute either the notice of proposal, as filed, or a statement of the substance of the proposed action to the news media maintaining a press office in the State House Complex;

5. The agency shall make available electronically on its web site, through the largest nonproprietary cooperative public computer network, either the notice of proposal, as filed, or a statement of the substance of the proposed action; and

6. The agency shall undertake an additional method of publicity other than publication in the Register, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule. Each agency shall adopt rules prescribing the manner in which it shall provide additional publicity under this paragraph, which rules shall set forth the circumstances under which each additional method shall be employed.

i. The additional method of publicity shall include information on the time, place, and manner in which interested persons may present comments and either of the following:

(1) The full text of the proposed rule; or

(2) A statement of the substance of the proposed action; or

(3) A description of the subject and issues involved.

ii. The additional method of publicity may be by:

(1) Notice in a newspaper of general circulation;

(2) Trade, industry, government or professional publications;

(3) Distribution of a press release to the news media;

(4) Posting of a notice in an appropriate location(s);

(5) Mailing to a distribution list; or

(6) Any other manner reasonably calculated to inform those persons most likely to be affected by or interested in the intended action.

(b) Additional notice of the proposal under (a)3 through 6 above shall be provided at least 30 days prior to the close of the public comment period.

(c) Any notice of proposal which does not meet the requirements in N.J.A.C. 1:30-5.1 and this section may be subject to the provisions of N.J.A.C. 1:30-1.12.

1:30-5.3 Informal public input; notice of pre-proposal

(a) Where, prior to the initiation of a formal rulemaking proceeding, an agency seeks assistance in formulating a rule or wishes comments on a preliminary rule draft, it may solicit public input regarding the rulemaking. An agency may use any reasonable informal procedures and means of notice to solicit participation from the regulated or interested public.

(b) Where, pursuant to N.J.S.A. 52:14B-4(e), an agency determines to conduct a deliberative proceeding with respect to a contemplated rulemaking, the agency shall submit a "notice of pre-proposal" to the OAL for publication in the New Jersey Register at least 30 days prior to submission of any formal notice of proposal on the same subject.

(c) The notice of pre-proposal shall include:

1. The name of the adopting officer and agency;

2. The subject matter, problem and purpose which the agency contemplates addressing; and, when available, draft text of the contemplated rule;

3. A citation of the legal authority authorizing the contemplated action;

4. An announcement of the public's opportunity to be heard regarding the contemplated action, which shall include:

i. Where, when and how persons may present their comments orally or in writing (see N.J.A.C. 1:30-5.4, Opportunity to be heard); and

ii. When and where persons may attend an informal conference or consultation.

5. The title and nature of any committee, and where appropriate, the names and affiliations of any committee members, appointed to advise the agency with respect to any contemplated rulemaking.

(d) It is recommended that all rulemakings which involve the joint or concurrent promulgation of two or more agencies ("joint proposal and adoption") utilize a pre-proposal.

1:30-5.4 Opportunity to be heard

(a) The agency shall accept written or oral comments, arguments, data and views for at least 30 days following publication in the Register of the notice of pre-proposal or a notice of proposal.

1. If within 30 days of the publication of a notice of proposal sufficient public interest is demonstrated in an extension of the time for submission of comments, the agency shall provide an additional 30-day period for the receipt of comments by interested parties. The agency shall not adopt the proposed rule until after the end of that 30-day extension.

i. "Sufficient public interest" for granting an extension of the comment period pursuant to this paragraph shall be determined by the proposing agency based upon definite standards it has adopted as part of its rules of practice required under N.J.S.A. 52:14B-3(2).

(b) Where an agency permits any other method of public comment on a notice of pre-proposal or a notice of proposal, the agency shall provide timely notice of that opportunity in a manner reasonably calculated to reach the interested public.

(c) When a public hearing on a notice of pre-proposal or a notice of proposal is scheduled for a time after the public comment period, the comment period shall be extended in the public hearing notice until the close of the public hearing proceedings. The hearing officer may recommend to the agency head that the comment period be further extended to foster receipt of comments by persons attending the public hearing.

(d) To provide a full comment period, the agency shall accept all public comments postmarked within the designated comment period set forth in the notice of pre-proposal or notice of proposal, or as thereafter extended. If the designated comment period ends on a Sunday or postal holiday, the agency shall accept public comments postmarked through the next postal business day after the last day of the comment period.

(e) The agency shall consider fully all written and oral submissions concerning the notice of pre-proposal or notice of proposal.

1:30-5.5 Public hearings

(a) An agency shall conduct a public hearing on a proposed rulemaking if requested to do so by a Legislative Committee, a State agency, or a county, local or municipal governmental entity or if sufficient public interest is shown. The party requesting the public hearing shall submit the request to the agency within 30 days following publication of the notice of proposal in the Register. The

party requesting the public hearing shall also submit a copy of the request to the Office of Administrative Law.

1. "Sufficient public interest" for conducting a public hearing pursuant to this subsection shall be determined by the proposing agency based upon definite standards it has adopted as part of its rules of practice required under N.J.S.A. 52:14B-3(2).

(b) If a public hearing is to be held as part of a proceeding for a pre-proposal or a proposal, the agency shall provide at least 15 days notice of the public hearing.

1. When a public hearing is scheduled as part of a proceeding for a pre-proposal or a proposal, notice of the public hearing shall be contained in the notice of pre-proposal or proposal published in the New Jersey Register.

2. When a public hearing is scheduled after the notice of pre-proposal or proposal has been published, notice of the public hearing shall be published in the New Jersey Register, if such publication provides 15 days notice of the hearing. If timely Register publication is not feasible, notice of the public hearing may be published in the Register with less than 15 days notice as long as 15 days notice of the public hearing is given in another manner reasonably calculated to reach the interested public. A copy of such notice shall be filed with OAL.

(c) All public hearings shall be conducted by a hearing officer, who may be an official of the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to N.J.S.A. 52:14F-5 or an independent contractor.

(d) Hearings shall be conducted at such times and in locations which shall afford interested parties the opportunity to attend.

(e) If the agency has made a proposal, at the beginning of each hearing or series of hearings the agency shall present a summary of the factual information on which its proposal is based, and shall respond to questions posed by any interested party.

(f) The hearing officer shall make recommendations to the agency regarding the adoption, amendment or repeal of a rule. These recommendations shall be made public.

(g) In addition to any other publication of the results of the public hearing, the recommendations of the hearing officer, and the agency's response either accepting or rejecting the recommendations, shall be summarized and published in the New Jersey Register as set out in (g)1 through 4 below. The notice shall also state where a copy of the public hearing record may be reviewed or obtained.

1. When no proposed rulemaking results from the public hearing, the summary shall be published as a public notice.

2. When a proposed rulemaking results from the public hearing, the summary shall be published as part of the proposal notice.

3. When a public hearing is held as part of a proposed rulemaking and the proposed rule is adopted, the summary shall be published in the notice of adoption.

4. When a public hearing is held as part of a proposed rulemaking but the proposed rule is withdrawn or not adopted, the summary shall be published as a notice of agency action.

(h) The public hearing shall be recorded electronically or stenographically, and audio tapes, stenographic tapes or other untranscribed record of the proceeding shall be maintained by the agency. If a copy of the record is requested by any interested person, the agency shall arrange for the production of a copy of the record. After the requester pays the agency's actual cost for the copy, the copy shall be delivered to the requester.

1:30-5.6 Rulemaking record

(a) The agency shall retain a record of any oral and written comments or other material received in response to a proposal (N.J.A.C. 1:30-5.1) or a public hearing (N.J.A.C. 1:30-5.5) for a period of one year following the date of publication. The rulemaking record shall include the following:

1. The date, the method of issuance and a copy of any notices concerning the rule activity, including:

i. Any notice mailed to interested persons pursuant to N.J.A.C. 1:30-5.2(a)3;

ii. Any notice distributed to the news media pursuant to N.J.A.C. 1:30-5.2(a)4;

iii. Any notice made available electronically pursuant to N.J.A.C. 1:30-5.2(a)5; and

iv. Any additional publicity pursuant to N.J.A.C. 1:30-5.2(a)6.

2. A description of the public comments on the notice of proposal:

i. The names of the persons commenting on the notice of proposal;

ii. The name of any trade, craft or professional organization or association making written or oral submissions;

iii. A copy or summary of each written submission and a summary of each oral submission of any person made in response to the notice of proposal, and any written answer of the agency;

iv. The certificate of the adopting officer attesting that all submissions were examined and that due consideration was given to their merits prior to adoption of the proposed rule. A copy of the signed Certificate of Proposal, Adoption and Promulgation (form OAL APF-[date]) shall satisfy this requirement;

v. A description of the principal points of controversy revealed during the proceeding; and

vi. A statement of the reasons for accepting and rejecting the public comments.

3. A description of any public hearing or other proceeding which was held as a result of the notice of proposal (see N.J.A.C. 1:30-5.5), including:

i. The date, time and place;

ii. The name and title or position of the presiding person;

iii. The nature of the proceeding; and

iv. The recommendations of the hearing officer, in the case of a public hearing conducted pursuant to N.J.S.A. 52:14B-4(g).

(b) An agency may, but is not required to, maintain a record of any proceedings conducted pursuant to N.J.A.C. 1:30-5.3. If, however, any preliminary proceedings conducted pursuant to N.J.A.C. 1:30-5.3 result in a formal proposed rulemaking, the agency shall discuss in the proposal Summary such preliminary proceedings and the public's participation therein.

(c) If the proposed rule is adopted, the agency shall retain the rulemaking record for a period of not less than three years from the effective date of the adopted rule.

(d) The rulemaking record constitutes an official document of the administrative agency, is evidence of its compliance with the legislative mandate to provide opportunity for public comment, and shall be available for public inspection at the agency.

1:30-5.7 Negotiating a rule

(a) When an agency desires to negotiate the language of a rule proposal, the agency may voluntarily seek the assistance of the OAL in accordance with the following provisions. The negotiating a rule procedure established herein is separate and apart from any methods an agency may utilize to conduct a pre-proposal proceeding.

(b) An agency wishing to negotiate a proposal shall submit a written request to the Division of Administrative Rules, together with a summary of the subject matter; the problem and purpose which the agency contemplates addressing; a list of the interests affected; and the suggested representatives (negotiating team) of these interests.

(c) Each agency and interest group shall have one representative.

(d) A negotiation team shall be composed of no more than 10 members, including the OAL representative.

(e) The Division of Administrative Rules shall review the request, contact the agency and representative(s) of interests, if needed, and then determine whether the subject matter is feasible to negotiate (that is, appropriate for non-adversarial fact-finding and consensus); the interests involved are clearly defined; representatives of the interests sufficiently diverse, and that each representative is accountable to his or her interest group.

(f) Once the Division of Administrative Rules has determined that negotiations should commence, a notice of rule negotiation shall appear in the New Jersey Register. The notice shall identify the subject matter, interests, participants in the negotiation, and the OAL representative. Any interested party who is not heretofore represented on the negotiation team may file a petition for participation with the OAL representative.

(g) The petition for participation shall be a letter addressed to the OAL representative which outlines the petitioner's interests, and why they are not represented by the current composition of the negotiating team. The petition shall be received by OAL no later than 10 days after the notice of negotiation appears in the Register. The OAL representative will then determine within five business days of receipt of the petition whether to include the petitioner.

(h) The OAL representative shall convene the negotiation team within 20 days of notice of negotiation in the Register. The negotiation shall be completed within 10 days of commencement of same, unless all participants agree to continue.

(i) The OAL representative will provide all participants with a final version of a negotiated rule in the form required by N.J.A.C. 1:30-5.1 within 10 days of the completion of the negotiations.

(j) The agency shall either propose the rules negotiated or notify the OAL and all representatives that it rejects the negotiation within 30 days or such further period as agreed between the OAL Director and the head of the agency that had requested the negotiation.

(k) If, after 60 days from the commencement of the negotiation, no negotiated rule has been approved, the OAL representative may terminate the negotiation and disband the negotiating team. A notice of this action shall appear in the next available Register.

1:30-5.8 (Reserved)

SUBCHAPTER 6. PROCEDURE UPON ADOPTION

1:30-6.1 Notice of adoption

(a) When (a) an agency adopts a proposed rule, the agency shall prepare a "notice of adoption" and submit the notice to the OAL. The notice of adoption shall comply with the requirements of this section.

(b) The notice of adoption shall contain, in the following order:

1. The heading of the Administrative Code Title affected (for example, the heading of Title 19 is "Other Agencies");

2. The element within the adopting agency (for example, the Division or Bureau) originating the notice;

3. A caption describing the subject matter of what is adopted;

4. The N.J.A.C. citation for any adopted new rule and the existing citation for any rule(s) amended, repealed or readopted;

5. After "Proposed:", the publication date of the notice of proposal and the New Jersey Register citation of that notice;

6. After "Adopted:", the date of adoption and the name, title and signature of the adopting agency head or any other person authorized by statute to adopt agency rules;

7. After "Filed:", the date the notice of adoption is filed with the OAL and whether what is adopted is adopted "without change" from the proposal, or with "changes not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3)";

8. After "Authority:", a citation to the specific N.J.S.A. statutory authority for the adoption or the Public Law number if an N.J.S.A. citation is unavailable. An agency may not cite its general statutory authority unless specific legal authority is unavailable and the agency is relying on its general or residual powers, in which case a statement to that effect must have been made in the proposal Summary;

9. After "Effective Date:", the effective date of the adoption;

10. If applicable, after "Operative Date:", the operative date of the adoption if later than the date of Register publication;

11. After "Expiration Date:", the expiration date(s) of the rule(s) adopted, amended, repealed or readopted established in accordance with N.J.A.C. 1:30-6.4. If the rule(s) affected is exempt from having an expiration date, a statement of that exemption, including its basis, shall be provided;

12. If appropriate, a Summary of Hearing Officer's Recommendations and Agency Responses pursuant to N.J.A.C. 1:30-5.5;

13. A Summary of Public Comments and Agency Responses, that shall include a summary of the comments, arguments, data and views received and points of controversy developed during the rulemaking proceeding; the reasons for adopting the public comments accepted; and the reasons for rejecting the public comments rejected;

i. Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, this Summary shall include the names of all persons who submitted oral or written comments, arguments, data and views concerning the proposal. If the person is commenting on behalf of an entity, the adopting agency shall list as the commenter either the person and the entity for which the person is commenting, or the entity alone;

14. Summary of Changes Upon Adoption, describing any changes between the rules as proposed and adopted, and the reasons for the changes. Changes upon adoption described and explained in the notice in response to a comment need not be included in this Summary, in which case this portion of the notice would be a Summary of Agency Initiated Changes;

15. A Federal Standards Statement, or a Federal Standards Analysis and agency head certification, as required by N.J.A.C. 1:30-5.1(c)4.

i. If there are no changes upon adoption, the statement or analysis published as part of the proposal may be included;

ii. If there are changes upon adoption which affect whether or not the rule exceeds Federal standards or requirements or which require reproposal, the changes shall be evaluated and a new statement or analysis prepared pursuant to N.J.A.C. 1:30-5.1(c)4iii; and

16. The text of any changes between the rules as proposed and as adopted, specifically indicating additions and deletions.

(c) Along with a notice of adoption pursuant to (a) and (b) above, the agency shall also complete and submit to the OAL a Certificate of Proposal, Adoption and Promulgation (form OAL APF-[date]) signed by the adopting agency head, or other person authorized by statute to adopt rules, that the rule was duly adopted according to law and in compliance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and of this chapter.

1:30-6.2 Time for filing notice of adoption

(a) No notice of adoption, other than that for an emergency rule, organizational rule or a Federally required rule, shall be accepted for filing until either 60 days after the submission of the notice of proposal by the Office of Administrative Law to the Senate and Assembly or the passage of whatever comment period is established under N.J.A.C. 1:30-5.4(a), whichever is later.

(b) Any notice of adoption submitted for filing shall be reviewed by the Office of Administrative Law not more than five business days after the submission deadline for notices of adoption for the issue of the New Jersey Register for which the notice was submitted. Any notice of adoption which is found to be in non-compliance with N.J.S.A. 52:14B-1 et seq. and the rules contained in this chapter shall be subject to the provisions of N.J.A.C. 1:30-1.12.

(c) If a proposal has not been adopted and filed with the OAL within one year from the date the notice of proposal was published in the New Jersey Register, the proposal expires. Before the proposed rule amendment, repeal or readoption can be adopted, the agency must resubmit the notice of proposal for publication in the Register and must comply again with the notice and opportunity to be heard requirements of the Act.

1:30-6.3 Variance between the rule as proposed and as adopted

(a) Where, following the notice of proposal, an agency determines to make changes in the proposed rule which are so substantial that the changes effectively destroy the value of the original notice, the agency shall give a new notice of proposal and public opportunity to be heard.

(b) In determining whether the changes in the proposed rule are so substantial, consideration shall be given to the extent that the changes:

1. Enlarge or curtail who and what will be affected by the proposed rule;

2. Change what is being prescribed, proscribed or otherwise mandated by the rule;

3. Enlarge or curtail the scope of the proposed rule and its burden on those affected by it.

(c) Where the changes between the rule as proposed and as adopted are not substantial, the changes shall not prevent the adopted rule from being accepted for filing. Changes which are not substantial include:

1. Spelling, punctuation, technical, and grammatical corrections;

2. Language or other changes, whose purpose and effect is to clarify the proposal or correct printing errors; and

3. Minor substantive changes which do not significantly enlarge or curtail the scope of the rule and its burden, enlarge or curtail who or what will be affected by the rule, or change what is being prescribed, proscribed or mandated by the rule.

1:30-6.4 Expiration date for adopted rule

(a) Every chapter in the Administrative Code in effect as of January 16, 2001 shall expire on July 1, 2006, unless a different expiration date has been established for the chapter in accordance with (f) below or no expiration date is required pursuant to (c) below. Every chapter adopted or readopted on or after July 1, 2001 shall expire five years after the chapter's effective date, unless a sooner expiration date is established in accordance with (f) below or no expiration date is required pursuant to (c) below. Every chapter first effective from January 17, 2001 through June 30, 2001 shall, pursuant to Executive Order No. 66(1978), expire five years after the chapter's effective date, unless a sooner expiration date is established for the chapter or the chapter is readopted in accordance with (f) below, or no expiration date is required under that Executive Order. All notices of adoption filed with the OAL shall include the expiration date(s) of the rules affected by the adoption.

(b) Expiration dates shall be fixed at the chapter level. An adopted new chapter shall have an expiration date no more than five years from the chapter's effective date.

(c) No expiration date need be included where the adopting agency establishes in writing that the rules in a chapter are exempt from the expiration date requirement under (c)1 or 2 below:

1. The provisions of the rules are prescribed by Federal law, so that the agency exercises no discretion as to whether to promulgate the rules and as to what is prescribed by the rules, in which case the Federal law shall be cited in the notice of adoption; or

2. The expiration of the rules would violate any other Federal or State law, in which case the Federal or State law shall be cited in the notice of adoption.

(d) The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

(e) An expiration date shall remain effective, irrespective of any subsequent amendments to the rules, short of a complete repeal and repromulgation of the whole chapter.

1. Any notice of adoption of an amendment to a chapter shall include the expiration date which has been established for the chapter.

(f) In order to maintain the effectiveness of a chapter of rules, the rules must be duly proposed for readoption, adopted and filed on or before the chapter expiration date. Upon the filing of a notice of proposed readoption, the expiration date of the subject chapter shall be extended for 180 days, if such notice is filed with the Office of Administrative Law on or before the chapter expiration date.

If the chapter expiration date falls on a Saturday, Sunday or legal holiday, the 180-day expiration date extension shall take effect if the filing of the notice of proposed readoption occurs no later than the next business day after the expiration date. The readopted rules are effective upon filing with the Office of Administrative Law.

1. The new expiration date resulting from the completion of the readoption process shall be calculated from the date of filing of the readoption notice of adoption.

2. Any amendments to readopted rules are effective upon publication of the notice of adoption.

(g) Any readoption of rules which is proposed and could be adopted prior to their expiration date under (f) above, but is not filed for adoption with the OAL until after the rules' expiration date, shall be considered new rules which are effective upon publication of the notice of adoption in the Register. The new expiration date shall be calculated from the date of publication.

(h) Any proposed readoption of rules which expired before filing of the notice of proposal shall be considered proposed new rules.

1:30-6.5 Emergency rule adoption and concurrent proposal

(a) Any agency adopting an emergency rule pursuant to N.J.S.A. 52:14B-4(c) shall comply with the requirements of the adoption procedure. The documents to be filed for an emergency rule adoption shall include:

1. A Certificate of Proposal, Adoption and Promulgation (form OAL APF-[date]) signed by the agency head adopting the emergency rule;

2. A written summary of the subject matter of the emergency rules, which includes a finding that there is an imminent peril which necessitates emergency proceedings; the basis for the finding; and social and economic factors which bear upon the finding;

3. A signed statement from the Governor concurring as to the existence of an imminent peril which justifies the emergency rulemaking proceeding; and

4. The text of the emergency rule.

(b) An emergency rule is effective upon filing with the OAL.

(c) Upon filing with the Office of Administrative Law, the OAL shall transmit the Certificate of Proposal, Adoption and Promulgation, the Governor's signed statement, and a copy of the emergency rule to the President of the Senate and the Speaker of the General Assembly.

(d) To continue the provisions of an emergency rule beyond the statutory 60-day period of emergency (see N.J.S.A. 52:14B-4(c)), the agency may propose the provisions of the emergency rule in a notice of proposal which is filed with the OAL at the same time that the emergency adoption is filed. The notice of emergency adoption shall state that the rule is being proposed concurrently. The concurrent proposal shall comply with N.J.A.C. 1:30-5.1 and may be adopted after the comment period. The adoption of the concurrent proposal shall be effective upon timely filing of the notice of adoption with the OAL. As used in the preceding sentence, "timely" means on or before the expiration date of the emergency rule. Any changes to the readopted rule shall be effective upon publication of the notice of adoption.

(e) An adoption of a concurrent proposal filed after the expiration of the emergency rule shall be effective upon publication in the Register.

(f) The provisions of an emergency rule shall not be readopted as an emergency rule.

1:30-6.6 Effective date and promulgation of adopted rule

(a) The following rules are effective upon filing with the Office of Administrative Law:

1. Any rule adopted as an emergency rule pursuant to N.J.A.C. 1:30-6.5(b) and (d);
2. Any rule readopted pursuant to N.J.S.A. 52:14B-5.1 (see N.J.A.C. 1:30-6.4(f));
3. Any rule adopted as an organizational rule pursuant to N.J.S.A. 52:14B-4(b); or
4. Any concurrent rule the adoption of which is filed prior to the expiration of the emergency rule.

(b) Any other adopted rule is effective upon publication in the New Jersey Register.

1:30-6.7 Timely filing of notice of adoption

In order to avoid the expiration of a chapter or a proposed rulemaking, or to avoid a break in effectiveness between an emergency adoption and the adoption of a concurrent proposal, a notice of adoption shall be filed on or before the expiration date of the chapter, proposal or emergency adoption. If such date falls on a Saturday, Sunday or legal holiday, the filing shall occur no later than the next business day after the expiration date.

CHAPTER 31. ORGANIZATION OF THE OFFICE OF ADMINISTRATIVE LAW
CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. OPERATION AND PROCEDURES OF THE OFFICE OF ADMINISTRATIVE LAW

1:31-1.1 Functions of the Office

(a) The Office of Administrative Law (OAL) created by statute in 1978, is independent of any executive department, board, division, commission, agency, council, authority, office or officer of the State of New Jersey. The OAL performs four major functions:

1. Conducts contested case hearings, as provided in N.J.S.A. 52:14B-10 and N.J.S.A. 52:14F-8, and with the consent of the Director conducts other administrative hearings if requested by an agency head. In general, the Office of Administrative Law acquires contested case jurisdiction over a matter after an agency head determines that a contested case exists and subsequently files the case with the OAL, as provided in N.J.A.C. 1:1-1;

2. Promulgates rules for the conduct of contested case hearings. Rules are promulgated to assist judges, attorneys, and contested case parties by clarifying legal requirements;

3. Supervises, coordinates and records rulemaking proceedings within the Executive Branch. Under the authority of N.J.S.A. 52:14F-5(f), the OAL oversees agency compliance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.) and through N.J.A.C. 1:30-1 has established standards to guide agency rulemaking.

4. Publishes the New Jersey Register, and the New Jersey Administrative Code and makes copies of initial decisions available through the Rutgers Camden Law School website www.lawlibrary.rutgers.edu. The publication function of the OAL is multifaceted:

i. Publication of proposed rules in the New Jersey Register gives an interested person an opportunity to comment and object;

ii. Publication of adopted rules in both the New Jersey Register and New Jersey Administrative Code provides a ready, updated reference to State agency rules; and

iii. Availability of decisions in contested cases provides the public with access to administrative adjudications.

1:31-1.2 (Reserved)

1:31-1.3 Public information requests and submissions

(a) A member of the public may obtain information or make a submission or a request, or file a petition concerning any program of the Office of Administrative Law by contacting the Public Information Officer, Office of Administrative Law, PO Box 049, Trenton, New Jersey 08625-0049.

(b) Any person may obtain copies of State agency rules, or may obtain information about the New Jersey Register or Administrative Code by contacting the Division of Administrative Rules, PO Box 049, Trenton, New Jersey 08625-0049. Register and Code subscription information can be obtained from the publisher, LexisNexis, at 1-800-833-9844 or at www.lexisnexis.com.

(c) The cost for copies of documents is:

1. First page to 10th page: $ 0.75 per page;
2. Eleventh page to 20th page: $ 0.50 per page;
3. All pages over 20: $ 0.25 per page.

(d) Payment for copies under (c) above may be made by check payable to Treasurer, State of New Jersey.

SUBCHAPTER 2. PROCEDURES OF THE OFFICE OF ADMINISTRATIVE LAW

1:31-2.1 Procedure to petition for a rule

(a) An interested person may petition for the promulgation, amendment or repeal of any rule of the Office of Administrative Law. A petition shall be in writing, shall be legible and intelligible and shall be signed by the petitioner. Each petition shall contain the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The statutory authority under which the Office of Administrative Law may take the requested action.

(b) The petitioner may provide the text of the proposed new rule, amended rule, or repealed rule.

(c) The Office of Administrative Law shall immediately date stamp and log each document submitted as a petition. Upon filing, the Office of Administrative Law shall, within 15 days of receipt of the petition, submit a notice of receipt of the notice of petition for a rule for publication in the New Jersey Register pursuant to the requirements of N.J.A.C. 1:30-4.1(c).

(d) No later than 60 days after receiving a petition, the Office of Administrative Law shall mail to the petitioner and file for publication in the New Jersey Register, a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-4.2.

1:31-2.2 Extension of comment period on proposed rulemaking activity

(a) The designated public comment period for any rule proposed by the Office of Administrative Law shall be extended for a period of 30 additional days when sufficient public interest is demonstrated in an extension of the time for comment submission or whenever deemed appropriate by the Director.

1. Sufficient public interest for granting an extension of the public comment period exists whenever 10 or more individuals or entities have requested an extension of the comment period to the Office of Administrative Law. This communication must be submitted in writing to the individual designated to receive comments in the notice of rule proposal within 30 days of publication of the proposal.

1:31-2.3 Public hearing on proposed rulemaking activity

(a) The Office of Administrative Law shall conduct a public hearing on a proposed rule if, within 30 days following publication of the proposed rule in the New Jersey Register:

1. A public hearing is requested by a committee of the Legislature;
2. A public hearing is requested by a governmental agency or subdivision;

3. Sufficient public interest in a public hearing is demonstrated. Sufficient public interest in a public hearing shall be demonstrated whenever 10 or more individuals or entities request, in writing, such hearing. Such notice shall include the basis for the request; or

4. Whenever deemed appropriate by the Director.

1:31-2.4 Additional notice of rulemaking activity

(a) The Office of Administrative Law shall provide at least 30 days notice of all proposed rulemaking. Notice shall be provided in the following manner:

1. Publication in the New Jersey Register;

2. Distribution of a notice or statement of the substance of the proposed rulemaking activity to the news media maintaining a press office in the New Jersey State House Complex;

3. Posting of the notice or statement of the substance of the proposed rulemaking activity on the official website of the New Jersey Office of Administrative Law at www.state.nj.us/oal; and

4. Mailing of the notice or a statement of the substance of the proposed rulemaking activity to all persons who have made timely requests to the Office of Administrative Law for advance notice of its rulemaking proceedings and to persons or organizations likely to be affected by or interested in the intended action, including, but not limited to, the New Jersey State Bar Association and to any appropriate committees thereof; the New Jersey Office of Attorney General; New Jersey State administrative agencies; public interest groups, New Jersey Legal Services; and labor and trade unions.

(b) Notice may also be provided through publication in the New Jersey Law Journal, New Jersey Lawyer, or other appropriate publication.

SUBCHAPTER 3. DISCIPLINE OF ADMINISTRATIVE LAW JUDGES

1:31-3.1 General causes for discipline

(a) The Director of the Office of Administrative Law may discipline an administrative law judge for:

1. Willful misconduct including misconduct which, although not directly pertaining to judicial duties, brings the office into disrepute or is prejudicial to the administration of justice;

2. Willful, persistent, or negligent failure of a judge to perform judicial duties, including incompetent performance of judicial duties;

3. Intemperance, including injudicious personal conduct, recurring loss of temper or control, abuse of alcohol, or the abuse of controlled dangerous substances;

4. Any conduct which constitutes a violation of the OAL Office Policies for Administrative Law Judges or the Code of Judicial Conduct for Administrative Law Judges; or

5. Other sufficient cause.

1:31-3.2 Complaints and forms of discipline

(a) Upon becoming aware of any circumstance, statement, criticism, or complaint, which is not obviously unfounded or frivolous, which does not relate solely to a matter subject to an appeal, and

which indicates that an administrative law judge has committed any conduct described in N.J.A.C. 1:31-3.1, the Director may initiate proceedings to impose disciplinary sanctions. Such sanctions shall include, but not be limited to:

1. The issuance of a private reprimand;
2. The issuance of a public reprimand;
3. The imposition of a fine;
4. A suspension of up to six months; or
5. A recommendation to the Governor for removal, pursuant to Art. V, Sec. IV, Par. 5 of the New Jersey Constitution.

1:31-3.3 Minor discipline

When the Director seeks to impose a written or oral reprimand, public or private, an administrative law judge shall receive formal notification of the charges and shall be afforded an opportunity to review the charges and to respond to the Director either orally or in writing. No formal hearing will be provided. The notice to the judge shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which they are based. The decision of the Director shall be final.

1:31-3.4 Penalty beyond reprimand

When the Director believes that a penalty greater than an oral or written reprimand may be appropriate, the Director may forward the matter to the Office of Administrative Law Advisory Committee on Judicial Conduct or issue a formal complaint and order in accordance with N.J.A.C. 1:31-3.8.

1:31-3.5 Establishment of OAL Advisory Committee on Judicial Conduct

(a) There is established an OAL Advisory Committee on Judicial Conduct to investigate complaints referred by the Director concerning judicial conduct and to give advisory opinions, recommendations, and reports to the Director of the Office of Administrative Law. The Committee shall consist of three members who shall be appointed by the Director for terms expiring respectively one, two, and three years after appointment, whose respective successors shall be appointed upon the expiration of such terms and annually thereafter to serve three-year terms. A Committee member may be reappointed at the discretion of the Director. The Director may appoint any administrative law judge to serve as a member of the Committee. If willing to serve, retired administrative law judges or retired judges of the Superior Court of New Jersey may be eligible for appointment to the Committee at the discretion of the Director. The Director shall appoint one member to serve as Chairperson. All appointments to fill vacancies shall be for the unexpired term.

(b) No action of the Committee shall be valid unless concurred to by a majority of its membership.

(c) An employee of OAL designated by the Director will serve as secretary to the Committee.

(d) The Committee shall be provided with clerical and administrative assistance as may be needed to perform its function. If a criminal investigation is required, the matter shall be referred to the Attorney General.

(e) All papers filed with and proceedings before the Committee shall be confidential.

1:31-3.6 Preliminary investigation

(a) The Committee shall conduct a preliminary investigation at the request of the Director. To perform a preliminary investigation, the Committee may utilize the following methods:

1. It may request that the Director provide sufficient resources to conduct an investigation of the matter.

2. Unless the circumstances render it unnecessary or inappropriate, the Committee may require the complainant to file with the Committee a statement signed under oath against the judge.

3. The Committee shall notify the judge of the nature of the charge, the name of the person making it where appropriate, and that the judge has the opportunity to present within such reasonable time as the Committee shall fix, such matters as the judge may choose with respect to it. This includes the right to appear before the Committee, with or without counsel, and to make a statement under oath as the judge deems appropriate. If deemed appropriate, the Committee may request that the complainant make a supplemental statement under oath. These statements, if oral, shall be sound recorded.

4. The notice to the judge shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which they are based.

1:31-3.7 Recommendations of the Committee

(a) Upon completion of the preliminary investigation, the Committee may take any of the following actions which may be accepted, rejected, or modified by the Director:

1. The Committee may recommend that the Director dismiss the charges and notify the parties of the action taken. If the matter has been made public, the Director may, at the request of the judge involved, issue a short statement of clarification and correction.

2. If the investigation reveals some departures by the judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys, and the like, or other conduct or demeanor which would reflect unfavorably upon the administration of justice if persisted in or were to become habitual or more substantial in character, the Committee may request the judge to appear at a time and place designated for an informal discussion of the matter. After making the judge aware of the objectionable conduct, and becoming satisfied that it was temporary in nature and not likely to become habitual, the Committee may recommend to the Director that the complaint be dismissed and the parties advised of the action taken, and the reasons therefor. Any such conference shall be recorded by a sound recording device and a transcribed record of the tape filed with the papers in the proceeding.

3. If the Committee believes that the judge may be suffering from a mental or physical disability which is disabling the judge and may continue to disable the judge indefinitely or permanently from the performance of his or her duties, it shall recommend to the Director an appropriate response that balances any medical need of the judge and protects the public interest.

4. Whenever the Committee concludes from the preliminary investigation that the circumstances merit an oral or written reprimand, the Committee shall promptly file a copy of the recommendation, and the record of the Committee certified as such by its secretary, with the Director. If the Director agrees with the recommendation, the Director shall proceed in accordance with N.J.A.C. 1:31-3.3. If the Director disagrees with the recommendation, the Director may issue a formal complaint and order in accordance with N.J.A.C. 1:31-3.8.

5. Whenever the Committee concludes from the preliminary investigation that the circumstances, if established at an evidentiary hearing, merit disciplinary action greater than an oral or written reprimand, and that formal proceedings to that end should be instituted, the Committee shall promptly file a copy of the recommendation and the record of the Committee certified as such by its secretary with the Director. The Committee shall issue also without delay and serve upon the judge a notice advising him or her that it has filed such a recommendation with the Director.

1:31-3.8 Issuance of order

Upon receipt and review of any opinions, recommendations, and reports from the Committee under N.J.A.C. 1:31-3.7(e), the Director may proceed in accordance with N.J.A.C. 1:31-3.3 or may issue a formal complaint and order the judge to show cause why a specific sanction should not be imposed or a recommendation for removal not be sent to the Governor. The order to show cause shall require the judge to answer the complaint within 30 days of service of the complaint and order upon the judge.

1:31-3.9 Formal hearing

Unless the judge's answer to the complaint renders further formal proceedings unnecessary, a due process hearing shall be conducted by a designee of the Director. The evidentiary hearing in this matter shall begin within 30 days from the filing of the answer with the OAL. At the hearing, the OAL will be represented by the secretary to the Committee or the Director may request representation from the Office of the Attorney General. The decision of the designated hearer shall be a recommendation to the Director. The Director shall make the final decision in the matter within 10 days unless notice is provided to the judge that the time for review needs to be extended.

1:31-3.10 Confidentiality

The record before the OAL Advisory Committee shall be confidential and shall not be available to any person except in the proper discharge of official duties, unless the judge requests that the charge, proceedings, and action shall be made public. If a public reprimand is imposed by the Director, the written reprimand shall be made public. Upon the issuance of a complaint and order to show cause, the complaint and order shall be made public. The entire record shall, unless the Director otherwise orders, be made public upon the entry of a final order imposing a fine, suspension, or removal.

1:31-3.11 Judicial independence and discipline process

The methods used by the judge, but not the result arrived at by the judge in any case, may be the cause for discipline of the judge. In order to foster and encourage judicial independence, claims of error shall be left to appellate review and not be subject to discipline.

APPENDIX C

NEW JERSEY STATUTES

CHAPTER 14B

ADMINISTRATIVE PROCEDURE ACT

and

CHAPTER 14F

OFFICE OF ADMINISTRATIVE LAW ENABLING LEGISLATION

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS

SUBTITLE 3. EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS

CHAPTER 14B. ADMINISTRATIVE PROCEDURE AND REGULATORY FLEXIBILITY

§ 52:14B-22. State policy to reduce confusion, costs in complying with State regulations
§ 52:14B-23. Administrative agency standards, statement relative to federal requirements
§ 52:14B-24. Applicablity of act relative to federal requirements
§ 52:14B-25. Definitions relating to certain mandate requirements and procedures for small municipalities

52:14B-1. Short title

This act shall be known and may be cited as the "Administrative Procedure Act."

52:14B-2. Definitions

As used in this act:

(a) "State agency" or "agency" shall include each of the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor.

(b) "Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing, but shall not include any proceeding in the Division of Taxation, Department of the Treasury, which is reviewable de novo by the Tax Court.

(c) "Administrative adjudication" or "adjudication" includes any and every final determination, decision or order made or rendered in any contested case.

(d) "The head of the agency" means and includes the individual or group of individuals constituting the highest authority within any agency authorized or required by law to render an adjudication in a contested case.

(e) "Administrative rule" or "rule," when not otherwise modified, means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intraagency and interagency statements; and (3) agency decisions and findings in contested cases.

(f) "License" includes the whole or part of any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law.

(g) "Secretary" means the Secretary of State.

(h) "Director" means the Director and Chief Administrative Law Judge of the Office of Administrative Law, unless otherwise indicated by context.

52:14B-3. Additional requirements for rule-making

In addition to other rule-making requirements imposed by law, each agency shall:

(1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency, and if

not otherwise set forth in an agency's rules, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures;

(3) make available for public inspection all final orders, decisions, and opinions, in accordance with the provisions of chapter 73 of the laws of 1963 as amended and supplemented (C. 47:1A-1 et seq.);

(4) publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rule-making activities for the next six months. The calendar shall include the name of the agency and agency head, a citation to the legal authority authorizing the rule-making action and a synopsis of the subject matter and the objective or purpose of the agency's proposed rules.

In a manner prescribed by the Director of the Office of Administrative Law, each agency shall appropriately publicize that copies of its calendar are available to interested persons for a reasonable fee. The amount of the fee shall be set by the director.

An agency shall notify the Director of the Office of Administrative Law when it wishes to amend its calendar of rule-making activities. Any amendment which involves the addition of any rule-making activity to an agency's calendar shall provide that the agency shall take no action on that matter until at least 45 days following the first publication of the amended calendar in which the announcement of that proposed rule-making activity first appears.

The provisions of this paragraph shall not apply to rule-making:

(a) required or authorized by federal law when failure to adopt rules in a timely manner will prejudice the State;

(b) subject to a specific statutory authorization requiring promulgation in a lesser time period;

(c) involving an imminent peril subject to provisions of subsection (c) of section 4 of P.L. 1968, c. 410 (C. 52:14B-4);

(d) for which the agency has published a notice of pre-proposal of a rule in accordance with rules adopted by the Director of the Office of Administrative Law; or

(e) for which a comment period of at least 60 days is provided.

A proposed rule falling within any of the exceptions to the provisions of this subsection shall so indicate in the notice of proposal.

52:14B-3.1. Findings, declarations

The Legislature finds and declares that:

a. Under the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) all interested persons are afforded reasonable opportunity to submit data, views or arguments, orally or in writing, during any proceedings involving a permit decision;

b. Persons who have particularized property interests or who are directly affected by a permitting decision have constitutional and statutory rights and remedies;

c. To allow State agencies without specific statutory authorization to promulgate rules and regulations which afford third parties, who have no particularized property interests or who are not directly affected by a permitting decision, to appeal that decision would give rise to a chaotic unpredictability and instability that would be most disconcerting to New Jersey's business climate and would cripple economic development in our State; and

d. It is, therefore, altogether fitting and proper, and within the public interest, to prohibit State agencies from promulgating rules and regulations which would allow third party appeals of permit decisions unless specifically authorized to do so by federal law or State statute.

52:14B-3.2. Definitions

As used in this act:

"Permit decision" means a decision by a State agency to grant, deny, modify, suspend or revoke any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"State agency" or "agency" means and includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, councils, authorities, offices or officers within any such departments which are authorized to grant, deny, modify, suspend, or revoke a license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"Third party" means any person other than:

a. An applicant for any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law;

b. A State agency; or

c. A person who has particularized property interest sufficient to require a hearing on constitutional or statutory grounds.

52:14B-3.3. Appeal of permit decision by third party

a. Except as otherwise required by federal law or by a statute that specifically allows a third party to appeal a permit decision, a State agency shall not promulgate any rule or regulation that would allow a third party to appeal a permit decision.

b. Nothing herein shall be construed as abrogating or otherwise limiting any person's constitutional and statutory rights to appeal a permit decision.

52:14B-4. Adoption, amendment, repeal of rules

(a) Prior to the adoption, amendment, or repeal of any rule, except as may be otherwise provided, the agency shall:

(1) Give at least 30 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and in addition to other public notice required by law shall be published in the New Jersey Register. Notice shall also be distributed to the news media maintaining a press office to cover the State House Complex, and made available electronically through the largest nonproprietary cooperative public computer

network. Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so, and inform those persons most likely to be affected by or interested in the intended action. Methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations. The rules shall prescribe the circumstances under which each additional method shall be employed;

(2) Prepare for public distribution at the time the notice appears in the Register a statement setting forth a summary of the proposed rule, a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, a description of the expected socio-economic impact of the rule, a regulatory flexibility analysis, or the statement of finding that a regulatory flexibility analysis is not required, as provided in section 4 of P.L. 1986, c. 169 (C. 52:14B-19), a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect, and an agriculture industry impact statement as provided in section 7 of P.L. 1998, c. 48 (C. 4:1C-10.3); and

(3) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. If within 30 days of the publication of the proposed rule sufficient public interest is demonstrated in an extension of the time for submissions, the agency shall provide an additional 30 day period for the receipt of submissions by interested parties. The agency shall not adopt the proposed rule until after the end of that 30 day extension.

The agency shall conduct a public hearing on the proposed rule at the request of a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest is shown, provided such request is made to the agency within 30 days following publication of the proposed rule in the Register. The agency shall provide at least 15 days' notice of such hearing, which shall be conducted in accordance with the provisions of subsection (g) of this section.

The head of each agency shall adopt as part of its rules of practice adopted pursuant to section 3 of P.L. 1968, c. 410 (C. 52:14B-3) definite standards of what constitutes sufficient public interest for conducting a public hearing and for granting an extension pursuant to this paragraph.

(4) Prepare for public distribution a report listing all parties offering written or oral submissions concerning the rule, summarizing the content of the submissions and providing the agency's response to the data, views and arguments contained in the submissions.

(b) A rule prescribing the organization of an agency may be adopted at any time without prior notice or hearing. Such rules shall be effective upon filing in accordance with section 5 [C.52:14B-5] of this act or upon any later date specified by the agency.

(c) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, and the Governor concurs in writing that an imminent peril exists, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt the rule. The rule shall be effective for a period of not more than 60 days unless each house of the Legislature passes a resolution concurring in its extension for a period of not more than 60 additional days. The rule shall not be effective for more than 120 days unless repromulgated in accordance with normal rule-making procedures.

(d) No rule hereafter adopted is valid unless adopted in substantial compliance with this act. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this act shall be commenced within one year from the effective date of the rule.

(e) An agency may file a notice of intent with respect to a proposed rule-making proceeding with the Office of Administrative Law, for publication in the New Jersey Register at any time prior to the formal notice of action required in subsection (a) of this section. The notice shall be for the purpose of eliciting the views of interested parties on an action prior to the filing of a formal rule proposal. An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule-making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule-making.

(f) An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Each agency shall prescribe by rule the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:

(1) The substance or nature of the rule-making which is requested;

(2) The reasons for the request and the petitioner's interest in the request;

(3) References to the authority of the agency to take the requested action.

The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.

Within 60 days following receipt of any such petition, the agency shall either; (i) deny the petition, giving a written statement of its reasons; (ii) grant the petition and initiate a rule-making proceeding within 90 days of granting the petition; or (iii) refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the agency shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register.

If an agency fails to act in accordance with the time frame set forth in the preceding paragraph, upon written request by the petitioner, the Director of the Office of Administrative Law shall order a public hearing on the rule-making petition and shall provide the agency with a notice of the director's intent to hold the public hearing if the agency does not. If the agency does not provide notice of a hearing within 15 days of the director's notice, the director shall schedule and provide the public with a notice of that hearing at least 15 days prior thereto. If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L. 1978, c. 67 (C. 52:14F-5), or an independent contractor assigned by the director. The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition, a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in subsection (g) of section 4 of P.L. 1968, c. 410 (C. 52:14B-4), except that the person assigned to conduct the hearing shall make a report summarizing

the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition. This report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rule-making.

(g) All public hearings shall be conducted by a hearing officer, who may be an official of the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L. 1978, c. 67 (C. 52:14F-5) or an independent contractor. The hearing officer shall have the responsibility to make recommendations to the agency regarding the adoption, amendment or repeal of a rule. These recommendations shall be made public. At the beginning of each hearing, or series of hearings, the agency, if it has made a proposal, shall present a summary of the factual information on which its proposal is based, and shall respond to questions posed by any interested party. Hearings shall be conducted at such times and in locations which shall afford interested parties the opportunity to attend. A verbatim record of each hearing shall be maintained, and copies of the record shall be available to the public at no more than the actual cost, which shall be that of the agency where the petition for rule-making originated.

52:14B-4.1. Rules, submission to Legislature; referral to committee

Every rule hereafter proposed by a State agency shall be submitted by the Office of Administrative Law to the Senate and General Assembly within two business days of its receipt by the office, and the President of the Senate and the Speaker of the General Assembly shall immediately refer the proposed rule to the appropriate committee in each House.

52:14B-4.1a. Compliance with interagency rules required; OAL review for clarity

a. The director is authorized to refuse to accept from an agency a notice of proposal or notice of adoption which adopts, readopts or amends a rule or regulation, if the director determines that the rule or regulation and its accompanying materials do not comply satisfactorily with the interagency rules of the director. The State agency shall not be authorized to adopt, readopt or amend a rule or regulation where notice of proposal or notice of adoption is refused by the director in accordance with this provision, except by proposing the adoption, readoption or amendment in compliance with agency rules.

b. The Office of Administrative Law, upon its review and determination, shall not accept for publication any notice of intention to adopt, readopt or amend a rule or regulation, a proposed rule, summary of the proposed rule, regulatory impact analysis, or other accompanying materials which lacks a standard of clarity.

As used in this section, "standard of clarity" means the document is written in a reasonably simple and understandable manner which is easily readable. The document is drafted to provide adequate notice to affected persons and interested persons with some subject matter expertise. The document conforms to commonly accepted principles of grammar. The document contains sentences that are as short as practical, and is organized in a sensible manner. The document does not contain double negatives, confusing cross references, convoluted phrasing or unreasonably complex language. Terms of art and words with multiple meanings that may be misinterpreted are defined. The document is sufficiently complete and informative as to permit the public to

understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, readoption or amendment of the rule or regulation.

c. The provisions of subsection b. of this section shall not apply to any administrative rule that a State agency adopts to conform to a model code, federal rule, interstate agreement or other similar regulatory measure not written by the State agency but incorporated into an administrative rule. The State agency shall append to the proposed rule for publication a written statement describing the rule which complies with subsection b. of this section.

d. The Governor may, upon written request of a State agency, waive the requirements of this section with respect to the repromulgation, without amendment, of any rule or provision of a rule.

52:14B-4.2. Repealed by L. 2001, c. 5, 11, effective July 1, 2001

52:14B-4.3. Concurrent resolution of Legislature to invalidate rules in whole or in part

If, pursuant to Article V, section 4, paragraph 6 of the New Jersey Constitution, the Senate and General Assembly adopt a concurrent resolution invalidating a rule or regulation, in whole or in part, or prohibiting a proposed rule or regulation, in whole or in part, from taking effect, the presiding officer of the House of final adoption shall cause the concurrent resolution to be transmitted to the Office of Administrative Law for publication in the New Jersey Register and the New Jersey Administrative Code as an annotation to the rule or regulation.

52:14B-4.4. Repealed by L. 2001, c. 5, 11, effective July 1, 2001

52:14B-4.5. Repealed by L. 2001, c. 5, 11, effective July 1, 2001

52:14B-4.6. Repealed by L. 2001, c. 5, 11, effective July 1, 2001

52:14B-4.7. Repealed by L. 2001, c. 5, 11, effective July 1, 2001

52:14B-4.8. Votes on concurrent resolutions; recordation

A vote by the Senate or General Assembly on a concurrent resolution on any action authorized by this act shall be a recorded vote.

52:14B-4.9. Proposed rule which revises, rescinds or replaces proposed, existing or suspended rule as new rule

Any rule proposed by a State agency which revises, rescinds or replaces either (1) any proposed or existing rule or (2) any rule which has been suspended shall be considered as a new rule and shall be subject to the provisions of this act and the act to which it is a supplement.

52:14B-5. Filing of rules; concurrent resolution of the Legislature; effect of publication

(a) Each agency shall file with the Director and Chief Administrative Law Judge of the Office of Administrative Law a certified copy of each rule adopted by it.

(b) Deleted by amendment, P.L. 2001, c. 5.

(c) The director shall: (1) accept for filing or publication any rule duly adopted and submitted by any agency pursuant to this act and which meets all of the requirements and standards of P.L. 2001, c. 5 (C. 52:14B-4.1a et al.); (2) endorse upon the certified copy of each rule accepted for filing pursuant to this act the date and time upon which such rule was filed; (3) maintain the certified copy of each rule so filed in a permanent register open to public inspection; and (4) accept for publication a duly adopted concurrent resolution of the Legislature invalidating any rule or regulation, in whole or in part, or prohibiting the proposed rule or regulation, in whole or in part, from taking effect.

(d) The filing of a certified copy of any rule shall be deemed to establish the rebuttable presumptions that: (1) it was duly adopted; (2) it was duly submitted for prepublication and made available for public inspection at the hour and date endorsed upon it; (3) all requirements of this act and of interagency rules of the director relative to such rule have been complied with; (4) its text is the text of the rule as adopted. Judicial notice shall be taken of the text of each rule, duly filed.

(e) The publication of a rule in the New Jersey Administrative Code or the New Jersey Register shall be deemed to establish the rebuttable presumption that the rule was duly filed and that the text of the rule as so published is the text of the rule adopted. Judicial notice shall be taken of the text of each rule published in the New Jersey Administrative Code or the New Jersey Register.

52:14B-5.1. Expiration of rules in five years; continuation

a. Every rule in effect on the enactment date of P.L. 2001, c. 5 (C. 52:14B-4.1a et al.) shall expire five years following the effective date of this act unless a sooner expiration date has been established for the rule.

b. Every rule adopted on or after the effective date of P.L. 2001, c. 5 (C. 52:14B-4.1a et al.) shall expire five years following the effective date of the rule unless a sooner expiration date has been established for the rule. The expiration date shall be included in the adoption notice of the rule in the New Jersey Register and noted in the New Jersey Administrative Code.

c. An agency may continue in effect an expiring rule for a five year period by duly proposing and readopting the rule prior to its expiration. Upon the filing of a notice of proposed readoption, the expiration date of the rule shall be extended for 180 days, if such notice is filed prior to the expiration of the rule.

d. The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

e. This section shall not apply to any rule repealing a rule or any rule prescribed by federal law or whose expiration would violate any other federal or State law, in which case the federal or State law shall be cited in the publication of the rule.

52:14B-6. Repealed by L. 1978, c. 67, 12

52:14B-7. New Jersey Administrative Code; New Jersey Register; publication

(a) The director shall compile, index, and publish a publication to be known as the "New Jersey Administrative Code," containing all effective rules adopted by each agency. The code shall be periodically supplemented or revised, and shall remain under the control and direction of the Office of Administrative Law regardless of the method or medium chosen to store, maintain or distribute it.

(b) The director shall publish a bulletin, at least monthly, to be known as the "New Jersey Register" setting forth: (1) the text of all rules filed during the preceding month, and (2) such notices as shall have been submitted pursuant to this act.

(c) The director shall issue annually a schedule for the filing of documents for publication in the New Jersey Register. The director may omit from the New Jersey Register or compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available by the adopting agency on application thereto, and if the register or code contains a notice stating the general subject matter of the omitted rule and stating the manner in which a copy thereof may be obtained. The director may include within the New Jersey Register and the New Jersey Administrative Code any document, material or information which the director may deem appropriate and convenient.

(d) At least one copy of the New Jersey Administrative Code and copies of the New Jersey Register and compilations shall be made available upon request to the Governor, the head of each principal department, the Office of Legislative Services, the State Library and to such other State agencies and public officials as the director may designate free of charge. The director shall provide for the publication, sale and distribution of the Code and Register to the public by whatever means, including entering into contractual or licensing arrangements, most likely to ensure the widest dissemination possible.

(e) (Deleted by amendment, P.L.1993, c.343).

(f) The director may determine the order in which such rules or any parts thereof are to be presented in the New Jersey Register and the New Jersey Administrative Code; the director may number or renumber the parts, paragraphs and sections into which such rules may be divided; the director may further divide or combine existing parts, paragraphs and sections and may provide for appropriate digests, indices and other related material. The director shall not, however, change the language of any existing rule excepting a title or explanatory caption; but shall recommend any such changes as the director may deem advisable to the administrative agency authorized to adopt such rule. The director may periodically review the New Jersey Administrative Code for expired rules and shall remove such rules upon notice to the appropriate agency head.

(g) The director is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this act.

52:14B-8. Declaratory rulings

Subject to the provisions of section 4(b) and 4(e) of chapter 20, laws of 1944, as amended and supplemented (C. 52:17A-4b and 4e), an agency upon the request of any interested person may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. A declaratory ruling

shall bind the agency and all parties to the proceedings on the state of facts alleged. Full opportunity for hearing shall be afforded to the interested parties. Such ruling shall be deemed a final decision or action subject to review in the Appellate Division of the Superior Court. Nothing herein shall affect the right or practice of every agency in its sole discretion to render advisory opinions.

52:14B-9. Notice and hearing in contested cases

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include in addition to such other information as may be deemed appropriate:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond, appear and present evidence and argument on all issues involved.

(d) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, or consent order.

(e) Oral proceedings or any part thereof shall be transcribed on request of any party at the expense of such party.

(f) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(g) Unless otherwise provided by any law, agencies may place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing.

52:14B-10. Evidence; judicial notice; recommended report and decision; final decision; effective date

In contested cases:

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either (i) necessitate undue consumption of time or (ii) create substantial danger of undue prejudice or confusion. The administrative law judge shall give effect to the rules of privilege recognized by law. Any party in a contested case may present his case or defense by oral and documentary evidence, submit rebuttal evidence and conduct such cross-examination as may be required, in the discretion of the administrative law judge, for a full and true disclosure of the facts.

(b) Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or administrative law judge. Parties shall be notified either before or during the hearing, or by

reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the agency or administrative law judge may be utilized in the evaluation of the evidence, provided this is disclosed of record.

(c) All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director and Chief Administrative Law Judge of the Office of Administrative Law, except as provided by this amendatory and supplementary act. A recommended report and decision which contains recommended findings of fact and conclusions of law and which shall be based upon sufficient, competent, and credible evidence shall be filed, not later than 45 days after the hearing is concluded, with the agency in such form that it may be adopted as the decision in the case and delivered or mailed, to the parties of record with an indication of the date of receipt by the agency head; and an opportunity shall be afforded each party of record to file exceptions, objections, and replies thereto, and to present argument to the head of the agency or a majority thereof, either orally or in writing, as the agency may direct. The head of the agency, upon a review of the record submitted by the administrative law judge, shall adopt, reject or modify the recommended report and decision no later than 45 days after receipt of such recommendations. In reviewing the decision of an administrative law judge, the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record. Unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency. The recommended report and decision shall be a part of the record in the case. For good cause shown, upon certification by the director and the agency head, the time limits established herein may be subject to extension.

(d) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated and shall be based only upon the evidence of record at the hearing, as such evidence may be established by rules of evidence and procedure promulgated by the director.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The final decision may incorporate by reference any or all of the recommendations of the administrative law judge. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.

(e) Except where otherwise provided by law, the administrative adjudication of the agency shall be effective on the date of delivery or on the date of mailing, of the final decision to the parties of record whichever shall occur first, or shall be effective on any date after the date of delivery or

mailing, as the agency may provide by general rule or by order in the case. The date of delivery or mailing shall be stamped on the face of the decision.

52:14B-10.1. Adjudication of certain contested cases

Any statute, rule or regulation to the contrary notwithstanding, all contested cases, as defined in section 2 of P.L.1968, c.410 (C.52:14B-2), except those cases in which criminal charges are also filed, arising under the Tenure Employees Hearing Law, article 2 of chapter 6 of Title 18A of the New Jersey Statutes, and referred to the Office of Administrative Law shall be adjudicated pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in an expeditious and timely manner except as follows:

a. The discovery process shall begin immediately upon the notice of the referral of the case to the Office of Administrative Law and a discovery request shall be initiated by transmitting the request to a receiving party within 30 days of receipt of the notice of referral. Answers to a discovery request shall be made within 30 days of the receipt of the request, except that if the discovery is available only by motion, the answer shall be due within 30 days of receipt of an order granting the motion. Additional discovery shall be permitted by motion or upon the consent of the parties, but shall be filed with the administrative law judge within 10 days of the filing of the answers to interrogatories. The administrative law judge may extend discovery time by no more than 30 days for disputes over sufficiency, completion or other just cause.

b. The pre-hearing conference shall be held within 30 days of the referral of the case to the Office of Administrative Law.

c. The hearing shall be held within 30 days after the end of the discovery period.

d. Transcripts if ordered by the parties shall be provided within 15 days of the conclusion of the hearing and all briefs shall be submitted to the Administrative Law Judge within 30 days of the conclusion of the hearing or receipt of the transcripts by the parties, whichever is later.

52:14B-11. Revocation, refusal to renew license, hearing required; exceptions

No agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with the provisions of this act applicable to contested cases. If a licensee has, in accordance with law and agency rules, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency. Any agency that has authority to suspend a license without first holding a hearing shall promptly upon exercising such authority afford the licensee an opportunity for hearing in conformity with the provisions of this act.

This section shall not apply (1) where a statute provides that an agency is not required to grant a hearing in regard to revocation, suspension or refusal to renew a license, as the case may be; or (2) where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a judgment of a court of competent jurisdiction; or (3) where the suspension or refusal to renew is based solely upon failure of the licensee to maintain insurance coverage as required by any law or regulation; or (4) where the suspension or refusal to renew a motor vehicle registration is based upon the failure of the vehicle

to be presented for inspection or to satisfy the inspection requirements of chapter 8 of Title 39 of the Revised Statutes.

52:14B-12. Administrative review

Whenever under statute or agency rule there is a mode of administrative review within an agency, such review shall remain unimpaired and any judicial review shall be from the final action of the agency. The administrative review within the agency need not comply with the requirements for the conduct of contested cases.

52:14B-13. Effect of act on prior proceedings

Nothing in this act shall be deemed to affect any agency proceeding initiated prior to the effective date hereof.

52:14B-14. Severability

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

52:14B-15. General repealer

All acts and parts of acts which are inconsistent with the provisions of this act are, to the extent of such inconsistency, hereby repealed; but such repeal shall not affect pending proceedings.

52:14B-16. Short title

This act shall be known and may be cited as the "New Jersey Regulatory Flexibility Act."

52:14B-17. "Small business" defined

As used in this act, "small business" means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.

52:14B-18. Approaches

In developing and proposing a rule for adoption, the agency involved shall utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small businesses of different types and of differing sizes. Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small businesses;

b. The use of performance rather than design standards; and

c. An exemption from coverage by the rule, or by any part thereof, for small businesses so long as the public health, safety, or general welfare is not endangered.

52:14B-19. Regulatory flexibility analysis

In proposing a rule for adoption, the agency involved shall issue a regulatory flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L. 1968, c. 410 (C. 52:14B-4). Each regulatory flexibility analysis shall contain:

a. A description of the types and an estimate of the number of small businesses to which the proposed rule will apply;

b. A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small business is likely to need in order to comply with the requirements;

c. An estimate of the initial capital costs and an estimate of the annual cost of complying with the rule, with an indication of any likely variation in the costs for small businesses of different types and of differing sizes; and

d. An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small businesses.

This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small businesses. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L. 1968, c. 410 (C. 52:14B-4).

52:14B-20. Considered one rule

In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with section 4 of this act.

52:14B-21. Description of effects of rule

In complying with the provisions of section 4 of this act, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

52:14B-22. State policy to reduce confusion, costs in complying with State regulations

It is the declared policy of the State to reduce, wherever practicable, confusion and costs involved in complying with State regulations. Confusion and costs are increased when there are multiple regulations of various governmental entities imposing unwarranted differing standards in the same area of regulated activity. It is in the public interest that State agencies consider applicable federal

standards when adopting, readopting or amending regulations with analogous federal counterparts and determine whether these federal standards sufficiently protect the health, safety and welfare of New Jersey citizens.

52:14B-23. Administrative agency standards, statement relative to federal requirements

On or after the effective date of this act, each administrative agency that adopts, readopts or amends any rule or regulation described in section 3 of this act shall, in addition to all the requirements imposed by existing law and regulation, include as part of the initial publication and all subsequent publications of such rule or regulation, a statement as to whether the rule or regulation in question contains any standards or requirements which exceed the standards or requirements imposed by federal law. Such statement shall include a discussion of the policy reasons and a cost-benefit analysis that supports the agency's decision to impose the standards or requirements and also supports the fact that the State standard or requirement to be imposed is achievable under current technology, notwithstanding the federal government's determination that lesser standards or requirements are appropriate.

52:14B-24. Applicability of act relative to federal requirements

This act shall apply to any rule or regulation that is adopted, readopted or amended under the authority of or in order to implement, comply with or participate in any program established under federal law or under a State statute that incorporates or refers to federal law, federal standards or federal requirements.

52:14B-25. Definitions relative to certain mandate requirements, procedures for small municipalities

a. For the purposes of this section:

"State mandate" means a program, service or activity that is to be performed or implemented by a local unit for or on behalf of its residents, which results in an added net cost to the local unit, and which is mandated in any statute enacted by the Legislature either prior to or after the effective date of this act. A "state mandated program" shall not include the following: any activity pertaining to a statute carrying criminal penalties; any mandate required by or arising from a court order or judgment; any program or service which is provided at local option under permissive State laws, rules, regulations or orders; any program which is required by private, special or local laws pursuant to Article IV, Section VII, paragraphs 8 and 10 of the State Constitution; any program required by or arising from an executive order of the Governor in exercising emergency powers granted by law; or any program mandated by federal law, rule, regulation or order.

"Small municipality" shall mean a municipality that has a limited population or geographic area according to criteria promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs.

b. In developing and proposing a rule for adoption, the agency involved shall utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic

impact of the proposed rule on small municipalities. Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small municipalities;

(2) The use of performance rather than design standards; and

(3) An exemption from coverage by the rule, or by any part thereof, for small municipalities so long as the public health, safety, or general welfare is not endangered, or if an exemption is not a possibility, the use of alternative methods of implementing the requirements of the rule.

c. In proposing a rule for adoption, the agency involved shall issue a State mandate flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). Each State mandate flexibility analysis shall contain:

(1) An estimate of the number of small municipalities to which the proposed rule will apply;

(2) A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small municipality is likely to need in order to comply with the requirements;

(3) An estimate of the annual cost to a small municipality of complying with the rule; and

(4) An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small municipalities.

d. This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small municipalities. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

e. In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with the requirements of this section.

f. In complying with the provisions of this section, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS

SUBTITLE 3. EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS

CHAPTER 14F. OFFICE OF ADMINISTRATIVE LAW

52:14F-1. Establishment; allocation within department of state; office defined

There is hereby established in the Executive Branch of the State Government the Office of Administrative Law. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Office of Administrative Law is hereby allocated within the Department of State, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any personnel thereof. As used in this act, "office" shall mean the Office of Administrative Law.

52:14F-2. Transfer of functions, powers and duties of division of administrative procedure to office of administrative law

All the functions, powers and duties heretofore exercised by the Division of Administrative Procedure in the Department of State pursuant to the Administrative Procedure Act, P.L.1968, c. 410 (C. 52:14B-1 et seq.) are transferred to and vested in the Office of Administrative Law created by this amendatory and supplementary act.

52:14F-3. Director

The head of the office shall be the director who shall be an attorney-at-law of this State for a minimum of five years. The director shall be appointed by the Governor with the advice and consent of the Senate.

The director shall serve for a term of six years. As used in this act, "director" shall mean the Director of the Office of Administrative Law and Chief Administrative Law Judge.

The director shall devote full time to the duties of the office and shall receive an annual salary equal to 89% of the annual salary of a Judge of the Superior Court. Any vacancy occurring in the office of the director shall be filled in the same manner as the original appointment, but for the unexpired term only.

52:14F-4. Administrative law judges; appointment, terms; compensation; recall

Permanent administrative law judges shall be appointed by the Governor with the advice and consent of the Senate to initial terms of one year. During this initial term, each judge shall be subject to a program of evaluation as delineated in section 5 of P.L. 1978, c. 67 (C. 52:14F-5). First reappointment of a judge after this initial term shall be by the Governor for a term of four years and until the appointment and qualification of the judge's successor.

Administrative law judges nominated by the Governor before July 1, 1981 shall, upon their confirmation by the Senate, serve for terms of five years and until the appointment and qualification of their successors.

Subsequent reappointments of a judge shall be by the Governor with the advice and consent of the Senate to terms of five years and until the appointment and qualification of the judge's successor. The advice and consent of the Senate, as provided in this section, shall be exercised within 45 days after a nomination for appointment has been submitted to the Senate, and if no action has been taken within the 45-day period, the nomination shall be deemed confirmed. This

45-day period shall not apply to any person nominated by the Governor for the position of administrative law judge prior to July 1, 1981.

The annual salary for an administrative law judge during the initial term of one year shall be equal to 75% of the annual salary of a Judge of the Superior Court. The annual salary for a judge during the first year of the first reappointment shall be increased to 78 2/3 % of the annual salary of a Judge of the Superior Court. Upon receipt of satisfactory annual evaluations, the annual salary for a judge shall be increased to 81 2/3 % of the annual salary of a Judge of the Superior Court for the second year of the first reappointment and to 85% of the annual salary of a Judge of the Superior Court for the third year of the first reappointment. The annual salary shall be 85% of the annual salary of a Judge of the Superior Court for the fourth year of the first reappointment and for each year of subsequent reappointments thereafter.

In addition to salary, an administrative law judge regularly assigned as an assignment judge shall receive $ 2,500 annually as additional compensation, and a judge regularly assigned other administrative or supervisory duties shall receive $ 1,500 annually as additional compensation.

All administrative law judges, including the Chief Administrative Law Judge, shall be retired upon attaining the age of 70 years, except that any administrative law judge who has retired on pension or retirement allowance may, with the judge's consent, be recalled by the Director/Chief Administrative Law Judge of the Office of Administrative Law for service as a recalled judge in the Office of Administrative Law. No recalled judge shall serve beyond his 80th birthday.

Upon such recall the retired judge shall have all the powers of an administrative law judge and shall be paid a per diem allowance fixed by the Director/ Chief Administrative Law Judge. In addition the recalled judge shall be reimbursed for reasonable expenses actually incurred by him in connection with his assignment and shall be provided with such facilities as may be required in the performance of his duties. Such per diem compensation and expenses shall be paid by the State. Payment for services and expenses shall be made in the same manner as payment is made to the judges of the Office of Administrative Law from which he retired.

52:14F-4.1. Inapplicability of mandatory retirement for administrative law judges, certain

The mandatory retirement provisions implemented pursuant to this act, P.L. 1999, c. 380 (C. 52:14-15.115 et al.), shall be inapplicable for three years after the effective date of this act to any judge of the Office of Administrative Law who is in service on the effective date of this act.

52:14F-4.2. Certain administrative law judges permitted to work beyond age 70

Notwithstanding the provisions of this act, P.L. 1999, c. 380 (C. 52:14-15.115 et al.), to the contrary, any judge of the Office of Administrative Law who is 60 years of age or older on the effective date of this act shall be permitted to continue service as a judge until attaining 10 years of service under the "Public Employees' Retirement System Act," P.L. 1954, c. 84 (C. 43:15A-1 et seq.).

52:14F-5. Powers, duties of Director and Chief Administrative Law Judge

The Director and Chief Administrative Law Judge of the Office of Administrative Law shall:

a. Administer and cause the work of the office to be performed in such manner and pursuant to such program as may be required or appropriate;

b. Organize and reorganize the office, and establish such bureaus as may be required or appropriate;

c. Except as otherwise provided in subsections l. and t., below, appoint, pursuant to the provisions of Title 11A of the New Jersey Statutes, such clerical assistants and other personnel as may be required for the conduct of the office;

d. Assign and reassign personnel to employment within the office;

e. Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether a summary or plenary hearing should be held to regulate the conduct of contested cases and the rendering of administrative adjudications;

f. Promulgate and enforce such rules for the prompt implementation and coordinated administration of the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) as may be required or appropriate;

g. Administer and supervise the procedures relating to the conduct of contested cases and the making of administrative adjudications, as defined by section 2 of P.L. 1968, c. 410 (C. 52:14B-2);

h. Advise agencies concerning their obligations under the Administrative Procedure Act, subject to the provisions of subsections b. and e. of section 4 of P.L. 1944, c. 20 (C. 52:17A-4); I. Assist agencies in the preparation, consideration, publication and interpretation of administrative rules required or appropriate pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.);

i. Assist agencies in the preparation, consideration, publication and interpretation of administrative rules required or appropriate pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.);

j. Employ the services of the several agencies and of the employees thereof in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency;

k. Have access to information concerning the several agencies to assure that they properly promulgate all rules required by law;

l. Assign permanent administrative law judges at supervisory and other levels who are qualified in the field of administrative law or in subject matter relating to the hearing functions of a State agency.

Administrative law judges shall receive such salaries as provided by section 4 of P.L. 1978, c. 67 (C. 52:14F-4), as amended by P.L. 1999, c. 380, shall not engage in the practice of law and shall devote full time to their judicial duties.

Administrative law judges appointed after the effective date of this amendatory act shall have been attorneys-at-law of this State for a minimum of five years. An administrative law judge appointed prior to the effective date of this amendatory act shall not be required to be an attorney or, if an attorney, shall not be required to have been an attorney-at-law for five years in order to be reappointed;

m. Appoint additional administrative law judges, qualified in the field of administrative law or in a subject matter relating to the hearing functions of a State agency, on a temporary or case basis as

may be necessary during emergency or unusual situations for the proper performance of the duties of the office, pursuant to a reasonable fee schedule established in advance by the director. Administrative law judges appointed pursuant to this procedure shall have the same qualifications for appointment as permanent administrative law judges;

n. Assign administrative law judges to conduct contested cases as required by sections 9 and 10 of P.L. 1968, c. 410 (C. 52:14B-9 and 52:14B-10). Proceedings shall be scheduled for suitable locations, either at the offices of the Office of Administrative Law or elsewhere in the State, taking into consideration the convenience of the witnesses and parties, as well as the nature of the cases and proceedings;

o. Assign an administrative law judge or other personnel, if so requested by the head of an agency and if the director deems appropriate, to any agency to conduct or assist in administrative duties and proceedings other than those related to contested cases or administrative adjudications, including but not limited to rule-making and investigative hearings;

p. Assign an administrative law judge not engaged in the conduct of contested cases to perform other duties vested in or required of the office;

q. Secure, compile and maintain all reports of administrative law judges issued pursuant to this act, and such reference materials and supporting information as may be appropriate;

r. Develop and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this act;

s. Develop and implement a program of judicial evaluation to aid himself in the performance of his duties, and to assist in the making of reappointments under section 4 of P.L. 1978, c. 67 (C. 52:14F-4). This program of evaluation shall focus on three areas of judicial performance: competence, productivity, and demeanor. It shall include consideration of: industry and promptness in adhering to schedules, making rulings and rendering decisions; tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses and counsel, and in presiding over contested cases; legal skills and knowledge of the law and new legal developments; analytical talents and writing abilities; settlement skills; quantity, nature and quality of caseload disposition; impartiality and conscientiousness. The director shall develop standards and procedures for this program, which shall include taking comments from selected litigants and lawyers who have appeared before a judge. The methods used by the judge but not the result arrived at by the judge in any case may be used in evaluating a judge. Before implementing any action based on the findings of the evaluation program, the director shall discuss the findings and the proposed action with the affected judge. The evaluation by the director and supporting data shall be submitted to the Governor at least 90 days before the expiration of any term. These documents shall remain confidential and shall be exempted from the requirements of P.L. 1963, c. 73 (C. 47:1A-1 et seq.);

t. Promulgate and enforce rules for reasonable sanctions, including assessments of costs and attorneys' fees which may be imposed on a party, and attorney or other representative of a party who, without just excuse, fails to comply with any procedural order or with any standard or rule applying to a contested case and including the imposition of a fine not to exceed $ 1,000.00 for misconduct which obstructs or tends to obstruct the conduct of contested cases;

u. Have power in connection with contested case hearings (1) to administer oaths to any and all persons, (2) to compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers, and documents of any person or persons, (3) to entertain objections to subpoenas, and (4) to rule upon objections to subpoenas except, that any orders of administrative

law judges regarding these objections may be reviewed by the agency head before the completion of the contested case in accordance with procedural rules, adopted by the Director and Chief Administrative Law Judge of the Office of Administrative Law. Misconduct by any party, attorney or representative of a party or witness which obstructs or tends to obstruct the conduct of a contested case or the failure of any witness, when duly subpoenaed to attend, give testimony or produce any record, or the failure to pay any sanction assessed pursuant to subsection t. of this section, shall be punishable by the Superior Court in the same manner as such failure is punishable by such court in a case pending therein; and

v. Assign any judge recalled pursuant to section 4 of P.L. 1978, c. 67 (C. 52:14F-4) and fix the per diem allowance.

52:14F-6. Administrative law judges, assignment; special appointment

a. Administrative law judges shall be assigned by the director from the office to an agency to preside over contested cases in accordance with the special expertise of the administrative law judge.

b. A person who is not an employee of the office may be specially appointed and assigned by the director to preside over a specific contested case, if the director certifies in writing the reasons why the character of the case requires utilization of a different procedure for assigning administrative law judges than is established by this amendatory and supplementary act.

c. Each administrative law judge shall have and exercise the powers conferred upon the director to the extent that the director shall delegate them by rule.

52:14F-7. Construction of act

a. Nothing in this amendatory and supplementary act shall be construed to deprive the head of any agency of the authority pursuant to section 10 of P.L. 1968, c. 410 (C. 52:14B-10) to determine whether a case is contested or to adopt, reject or modify the findings of fact and conclusions of law of any administrative law judge consistent with the standards for the scope of review to be applied by the head of the agency as set forth in that section and applicable case law.

b. Nothing in this amendatory and supplementary act shall be construed to affect the conduct of any contested case initiated prior to the effective date of this act, or the making of any administrative adjudication in such contested case.

52:14F-8. Administrative Law jurisdictional exclusions

Unless a specific request is made by the agency, no administrative law judge shall be assigned by the director to hear contested cases with respect to:

a. The State Board of Parole, the Public Employment Relations Commission, the Division of Workers' Compensation, the Division of Tax Appeals, or to any agency not within section 2(a) of P.L. 1968, c. 410 (C. 52:14B-2(a));

b. Any matter where the head of the agency, a commissioner or several commissioners, are required to conduct, or determine to conduct the hearing directly and individually.

52:14F-9. Applicability of State Agency Transfer Act

This act shall be subject to the provisions of the State Agency Transfer Act, P.L.1971, c. 375 (C. 52:14D-1 et seq.).

52:14F-10. Repeal of inconsistent acts and parts of act

All acts and parts of acts inconsistent with any of the provisions of this amendatory and supplementary act are, to the extent of such inconsistency, superseded and repealed.

52:14F-11. Severability

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

52:14F-12. Environmental unit

a. The Director of the Office of Administrative Law shall, within 12 months after the effective date of this act, establish within the Office of Administrative Law an environmental unit consisting of administrative law judges having special expertise in environmental law. The number of administrative law judges in the environmental unit shall be proportional to the number and complexity of environmental cases referred to the office.

b. Upon the establishment of the environmental unit, all contested cases, as defined in section 2 of P.L.1968, c.410 (C.52:14B-2), concerning environmental law referred to the Office of Administrative Law shall be assigned to and adjudicated by the administrative law judges in the environmental unit.

52:14F-13. Environmental workload reports

The director shall, within 12 months after enactment, and annually thereafter, notify the Assembly Energy and Environment Committee and the Senate Environmental Quality Committee or their successors, of the number of cases pending in the Office of Administrative Law, the total number of Administrative Law Judges serving in the office, the number of Administrative Law Judges serving in the environmental unit and the number of environmental cases assigned to the environmental unit.

52:14F-14. Definitions relative to expedited appeals in OAL

As used in sections 12 through 18 of P.L. 2004, c. 89 (C.52:14F-15 through C. 52:14F-21):

"Applicant" means any person applying for a permit pursuant to section 3, 5, 7, 9 or 10 of P.L. 2004, c. 89 (C. 52:27D-10.4, C. 13:1D-145, C. 27:1E-2, C. 52:27D-10.6 or C. 13:1D-146);

"Ombudsman" or "Smart Growth Ombudsman" means the Smart Growth Ombudsman appointed by the Governor pursuant to section 2 of P.L. 2004, c. 89 (C. 52:27D-10.3);

"Permit" means any permit or approval issued by the Department of Environmental Protection, pursuant to any law, or any rule or regulation adopted pursuant thereto, provided that "permit" shall not include any approval of a grant, or a permit issued pursuant to the "Coastal Area Facility Review Act," P.L. 1973, c. 185 (C. 13:19-1 et seq.), the "Air Pollution Control Act (1954)," P.L. 1954, c. 212 (C. 26:2C-1 et seq.), the "Solid Waste Management Act," P.L. 1970, c. 39 (C. 13:1E-1 et seq.), or the "Radiation Protection Act," P.L. 1958, c. 116 (C. 26:2D-1 et seq.), any permit or approval issued by the Department of Transportation pursuant to any law, or any rule or regulation adopted pursuant thereto, or any permit or approval required as a condition of development or redevelopment issued by the Department of Community Affairs pursuant to any law or any rule or regulation adopted pursuant thereto;

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State, or State or interstate agency; and

"Smart growth area" means an area designated pursuant to P.L. 1985, c. 398 (C. 52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or a designated growth center in an endorsed plan; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (C. 13:17-6); a growth area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L. 1979, c. 111 (C. 13:18A-8); an urban enterprise zone designated pursuant to P.L. 1983, c. 303 (C. 52:27H-60 et seq.) or P.L. 2001, c. 347 (C. 52:27H-66.2 et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (C. 40A:12A-5 and 40A:12A-6) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection.

52:14F-15. Expedited appeal of contested permit action

Upon the request of the applicant and in accordance with sections 14, 15, and 16 of P.L. 2004, c. 89 (C. 52:14F-17, C. 52:14F-18 and C. 52:14F-19), the Office of Administrative Law shall provide for the expedited appeal of any contested permit action for a proposed project in a smart growth area. An applicant who does not exercise this option retains the right to an administrative hearing and decision on the permit application pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

52:14F-16. Smart Growth Unit established in OAL

a. There is hereby established within the Office of Administrative Law a Smart Growth Unit consisting of administrative law judges having expertise in the matters heard pursuant to this section. All cases transmitted to the Office of Administrative Law pursuant to this section shall be assigned to and adjudicated by the administrative law judges in the Smart Growth Unit.

b. The Governor with the advice and consent of the Senate shall appoint administrative law judges to the Smart Growth Unit. Administrative law judges appointed to the Smart Growth Unit shall have expertise in the relevant subject areas pertaining to P.L. 2004, c. 89 (C. 52:27D-10.2 et

al.) and shall be subject to the terms of appointment and employment set forth in sections 4 and 5 of P.L. 1978, c. 67 (C. 52:14F-4 and C. 52:14F-5). The Director of the Office of Administrative Law and Chief Administrative Law Judge shall assign an administrative law judge as the assignment judge for the unit.

52:14F-17. Transmittal of administrative record

a. Within 15 days after the receipt by the Division of Smart Growth of notice of an applicant's request for an expedited review pursuant to subparagraph (d) of paragraph (1) of subsection c. of section 5, subparagraph (d) of paragraph (1) of subsection c. of section 7, or subparagraph (d) of paragraph (1) of subsection c. of section 9 of P.L. 2004, c. 89 (C. 13:1D-145, C. 27:1E-2 or C. 52:27D-10.6), as appropriate, the Division of Smart Growth shall transmit to the clerk of the Office of Administrative Law the administrative record which shall consist of:

(1) the request for an expedited review of the application;

(2) the application;

(3) documents the applicant filed in support of the application;

(4) the qualified and registered professional's certification that the application is complete and meets all statutory and regulatory requirements for approval;

(5) the Division of Smart Growth's notices of deficiency, if any, that the application is incomplete;

(6) the Division of Smart Growth's documentation, if any, in support of its determination that the application is incomplete; and

(7) the applicant's request for an expedited hearing.

b. The case shall be assigned to an administrative law judge who shall be a member of the Smart Growth Unit. Within 15 days after the filing of the case with the clerk of the Office of Administrative Law, the parties shall file briefs with the administrative law judge. There shall be no presumptions in favor of either party. No other evidence shall be admitted or relied upon, except by consent of the parties and with approval of the administrative law judge. Discovery shall not be available, except by consent of the parties. The standard of review shall be by the preponderance of the evidence.

c. Within 30 days after the date of submission of the briefs, the administrative law judge shall issue a written decision as to whether the application is complete. The time limits established herein shall not be extended except by consent of the parties.

d. If the administrative law judge decides that the application is complete, the Director of the Division of Smart Growth shall take action to approve, approve with conditions or deny the permit application within 45 days after the receipt of the decision.

e. The decision of the administrative law judge on the issue of completeness of the application shall be the final decision binding on the parties and shall not be subject to further review or appeal by either the Division of Smart Growth established pursuant to section 5, 7 or 9 of P.L. 2004, c. 89 (C. 13:1D-145, C. 27:1E-2 or C. 52:27D-10.6), as appropriate, or the applicant.

f. An applicant who does not request an expedited review pursuant to subparagraph (d) of paragraph (1) of subsection c. of section 5, subparagraph (d) of paragraph (1) of subsection c. of section 7 or subparagraph (d) of paragraph (1) of subsection c. of section 9 of P.L. 2004, c. 89 (C.

13:1D-145, C. 27:1E-2 or C. 52:27D-10.6), as appropriate, retains the right to an administrative hearing and decision on the permit application pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

52:14F-18. Denial of expedited permit, expedited hearing

a. If an application for a permit for a proposed project in a smart growth area is denied, the Office of Administrative Law shall provide an expedited hearing to review the denial of the permit upon the request of the applicant. An applicant who does not request a hearing pursuant to this section retains the right to an administrative hearing and decision on the permit application pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

b. Within 15 days after receipt by the Division of Smart Growth of notice of an applicant's request for an expedited hearing, the division shall transmit to the clerk of the Office of Administrative Law the administrative record which shall consist of:

(1) the application;

(2) documents the applicant filed in support of the application;

(3) the qualified and registered professional's certification that the application is complete and meets all statutory and regulatory requirements for approval;

(4) the Division of Smart Growth's notices of deficiency, if any, that the application is incomplete;

(5) the Division of Smart Growth's documentation, if any, in support of its determination to deny the application; and

(6) the applicant's request for an expedited hearing and decision.

c. The case shall be assigned to an administrative law judge who shall be a member of the Smart Growth Unit. The administrative law judge shall establish an expedited briefing and hearing schedule. Any hearings shall be concluded within 45 days after receipt of the case by the administrative law judge.

d. Nothing herein shall diminish the applicant's obligation to prove in the application process that it satisfies standards for approval of an application. There shall be no presumptions in favor of either party as to the underlying permit decision. The standard of review shall be by the preponderance of the evidence.

e. Within 45 days after the closing of the record, the administrative law judge shall issue a written decision as to whether the applicant has satisfied the standards required for the permit. The time limits established herein shall not be extended except by consent of the parties and the administrative law judge.

f. If the administrative law judge decides that the application should be approved, the Director of the Division of Smart Growth shall take action to approve or approve with conditions the permit within 10 days after receipt of the decision.

g. The decision of the administrative law judge shall be the final decision binding on the parties and shall not be subject to further review or appeal by either the Division of Smart Growth established pursuant to section 5, 7 or 9 of P.L. 2004, c. 89 (C. 13:1D-145, C. 27:1E-2 or C. 52:27D-10.6), as appropriate, or the applicant.

52:14F-19. Expedited hearing on terms or conditions on permits in smart growth areas

a. If an application for a permit for a proposed project in a smart growth area is approved by the Division of Smart Growth with terms or conditions, the Office of Administrative Law shall provide an expedited hearing and decision on any terms or conditions of such permit upon the request of the applicant. An applicant who does not request an expedited hearing pursuant to this section retains the right to an administrative hearing and decision on the permit application pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

b. Within 15 days after receipt by the agency of notice of an applicant's request for an expedited hearing and decision, the Division of Smart Growth shall transmit to the clerk of the Office of Administrative Law the case record which shall consist of:

(1) the application;

(2) documents the applicant filed in support of the application;

(3) the qualified and registered professional's certification that the application is complete and meets all statutory and regulatory requirements for approval;

(4) the Division of Smart Growth's notices of deficiency, if any, that the application is incomplete;

(5) the Division of Smart Growth's documentation, if any, in support of its determination to include the terms or conditions that are being contested; and

(6) the applicant's request for an expedited hearing and decision.

c. The case shall be assigned to an administrative law judge who shall be a member of the Smart Growth Unit. The administrative law judge shall establish an expedited briefing and hearing schedule. Any hearings shall be concluded within 45 days after receipt of the case by the administrative law judge.

d. Nothing herein shall diminish the applicant's obligation to prove in the application process that it satisfies standards for approval of an application. There shall be no presumptions in favor of either party as to the underlying permit decision. The standard of review shall be by the preponderance of the evidence.

e. Within 45 days after the closing of the record, the administrative law judge shall issue a written decision as to whether the applicant has satisfied the standards required for the permit. The time limits established herein shall not be extended except by consent of the parties and the Administrative Law Judge.

f. If the administrative law judge decides that a permit term or condition should be deleted or amended, the Director of the Division of Smart Growth shall take action to revise the terms or conditions of the permit within 10 days after receipt of the decision.

g. The decision of the administrative law judge shall be the final decision binding on the parties and shall not be subject to further review or appeal by either the Division of Smart Growth established pursuant to section 5, 7 or 9 of P.L. 2004, c. 89 (C. 13:1D-145, C. 27:1E-2 or C. 52:27D-10.6), as appropriate, or the applicant.

52:14F-20. Filing fees in Smart Growth Unit

The Office of Administrative Law shall have authority to establish filing fees, payable by the applicant, necessary to administer the Smart Growth Unit, including the direct and indirect costs for

personnel, operating expenses, equipment and activities of the Smart Growth Unit. These filing fees shall be published in the New Jersey Register and shall be effective upon publication therein.

52:14F-21. OAL rules, regulations

The Office of Administrative Law may adopt those rules and regulations that it deems necessary to carry out the requirements of P.L. 2004, c. 89 (C. 52:27D-10.2 et al.), which shall be effective upon filing.

52:14F-22. Appeals referred to Office of Administrative Law

a. Appeals filed with the Treasurer pursuant to section 4 of P.L.2005, c.124 (C.52:18-38) shall be referred to the Office of Administrative Law for hearing, and shall be given priority by that office.

b. The Office of Administrative Law shall establish a system for expedited hearings of contested determinations of debt in accordance with the provisions of section 4 of P.L.2005, c.124 (C.52:18-38).

c. The Office of Administrative Law shall establish a system for expedited hearings of the State's applications for wage executions in accordance with the provisions of subsection b. of N.J.S. 2A:17-50.

d. Nothing herein shall preclude the Office of Administrative Law from joining the hearings of contested determinations of debt and the State's applications for wage executions in appropriate cases.

e. The provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) shall apply to hearings and appeals pursuant to P.L.2005, c.124 (C.2A:16-11.1 et al.).

52:14F-23. Administrative Law Judge, power to hear application for a wage execution

a. An Administrative Law Judge shall have the power to hear the State's application for a wage execution pursuant to subsection b. of N.J.S. 2A:17-50 and to issue an order directing that an execution issue against wages, earnings, salary, income from trust funds or profits of the person who owes the debt.

b. The State shall serve the person who owes the debt with a copy of the application for wage execution. Such notice shall be mailed to the person's last known address and shall advise the person that, if the person wishes to contest the application, he may request a hearing within 30 days by filing such request with the Office of Administrative Law and the State Treasurer.

c. Such applications shall be heard and decided by the Office of Administrative Law within 45 days of the date of the filing of the application by the State.

d. The provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) shall apply to hearings and appeals pursuant to this section.

e. An order of an Administrative Law Judge pursuant to this section shall be considered final agency action for the purposes of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and shall be subject only to judicial review as provided in the Rules of Court.

Introduction to New Jersey Administrative Law Rulemaking & Uncontested Cases

Paul P. Josephson

When Is a Rule Required/Metromedia

- In Metromedia Inc. v. Dir., Div. of Taxation, 97 N.J. 313, 329, 338 (1984), the Supreme Court held that an administrative agency must conduct formal rulemaking before imposing new standards upon the parties that it regulates. The Court determined six factors, which guide the analysis of whether such formal rulemaking is necessary:

Metromedia Factors

These factors, "either singly or in combination," determine whether agency action amounts to the promulgation of an administrative rule:

(1) [the decision] is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group;

(2) [it] is intended to be applied generally and uniformly to all similarly situated persons;

(3) [it] is designed to operate only in future cases, that is, prospectively;

(4) [it] prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization;

(5) [it] reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and

(6) [it] reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.

How Are Rules Made?

- Notice and Comment: Proposed in New Jersey Register with 60-day opportunity to comment before adoption
- The APA mandates that an administrative agency "shall consider fully all written and oral submissions respecting [a] proposed rule," N.J.S.A. 52:14B-4(a)(3), and prepare for the public a report containing the agency's response to the comments submitted. N.J.S.A. 52:14B-4(a)(4).
- The agency's responses must be meaningful, reasoned and supported. See Animal Prot. League of N.J. v. N.J. Dep't of Envtl. Prot., 423 N.J. Super. 549, 573-74 (App. Div. 2011).
- "The purpose of the APA rulemaking procedures is 'to give those affected by the proposed rule an opportunity to participate in the process, both to ensure fairness and also to inform regulators of consequences which they may not have anticipated.'" In re Provision of Basic Generation Serv. for Period Beginning June 1 2008, 205 N.J. 339, 349 (2011)
- Can result in amendment and improvement of proposal.
- Creates a “legislative history” that can be useful to regulated parties and counsel.

Policy Guidance Documents

- Rulemaking, especially around contentious issues, can be a lengthy process. At a minimum, notice and comment process consumes 6 months; can take 12-24 months for contentious matters.
- As a matter of administrative convenience, agencies will often issue interpretations and guidance as to the application of statutes and rules where they are silent or ambiguous.
- These documents may be labelled “Policy Guidance,” “Guidance Document” or may be in the from of an online FAQ, “Handbook” or “Compliance Manual.”
- This court has invalidated agency guidance documents that have imposed obligations and standards beyond those expressed in duly-promulgated regulations. See, e.g., In re Adoption of Reg'l Affordable Hous. Dev. Program Guidelines, 418 N.J. Super. 387 (App. Div. 2011); In re N.J.A.C. 7:1B-1.1 et seq., 431 N.J. Super. 100.
- "[A]n agency determination must be considered an administrative rule when all or most of the relevant features of administrative rules are present and preponderate in favor of the rule-making process." Metromedia, 97 N.J. at 331.

Implications of Metromedia

- Council on Affordable Housing ("COAH") adopted "guidelines" for the implementation of an amendment to the New Jersey Fair Housing Act. Appellate Division concluded guidelines "set forth specific standards and conditions for regional planning that COAH will find acceptable in its administration of [the applicable statute]" and therefore constitute rules. Id. at 395.
- Metromedia is an essential tool in the administrative lawyer's toolbox.
- When your client receives an enforcement action, notice of violation or such based on information not expressed in statute or rule but in guidance documents, the guidance may not be enforced.
- When an agency imposes an excessive or problematic requirement on your client by guidance document, you can insist the agency must first promulgate a rule.
- Promulgation process will allow the opportunity to influence the final policy of the agency through comments, lobbying, association action, legislative persuasion.
- Promulgation process also allows the opportunity to create an administrative record that can then be used on appeal to challenge an adopted rule.

How to Challenge a Rule, or Lack of Rule

- Appeal of rules, or lack of rules, by a state agency are heard in the Appellate Division.
- Generally, deferential review standard: "arbitrary, capricious, or unreasonable, or . . . lack[ing] in fair support in the record.“
- Burden of proof is on the party challenging the rule.
- “Interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" Wnuck v. NJDMV, 337 N.J. Super. 52, 56 (App. Div. 2001)
- Despite general deference to the agency's interpretations, court is not bound by them. In re N.J.A.C. 7:1B-1.1 et seq., 431 N.J. Super 100, 114 (App. Div. 2013).
- “While we must defer to the agency's expertise, we need not surrender to it." N.J. Chapter of Nat'l. Ass'n of Indus. and Office Parks v. NJDEP, 241 N.J. Super. 145, 165 (App. Div. 1990).
- We therefore do not automatically accept an agency's interpretation of a statute or a regulation, and we review strictly legal questions de novo. Bowser v. Bd. of Trs., Police & Fireman's Ret. Sys., 455 N.J. Super. 165, 170-71 (App. Div. 2018)

Grounds for Challenging a Rule

- A rule may not contravene the terms of a statute. If it does, the rule is invalid.
- If legislative terms are clear and unambiguous, agency may not promulgate rules that amend, alter, enlarge or limit the confines of the enabling legislation.
- Court must determine if the rule is consistent with the principles and policies expressed in the enabling statute.
- Rules must be sufficiently definite to inform those subject to them what is required but may possess sufficient flexibility to accommodate day to day changes in the field; “reasonable number” instead of a fixed number may be sustained on review in some contexts.
- Can be void for vagueness or impossibility; but impracticality/not the most efficient/ burdensome is usually not sufficient.
- Appellate Division most likely to void rules for procedural missteps or clear legal or factual error by agency.
- Appellate Division will rarely overturned based on facts and interpretative matters requiring expertise in the field; courts will not select among competing reasonable interpretations or scoring decisions.

What is an Uncontested Case?

- An uncontested case is *not* a case where there is no dispute; often these are some of the most bitter disputes, typically when a competitor challenges a decision to issue a license/approval or award a contract to another business.
- A case is uncontested when it does not meet the test of a “contested case” for which a full trial type evidentiary hearing is required. Most often, that is because there is no constitutional or statutory right that the matter be determined by an agency after thee an opportunity for a hearing.
- "Uncontested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case. N.J.A.C. 1:1-2.1
- Evidence/information gathering hearings
- Hearings to gauge public sentiment/opinion
- Protests of state contract awards and property auctions.
- Challenges to minority, women owned or disadvantaged business enterprise certification.
- May be held by agency or ALJ; may be in person or on papers.

What Is the Procedure in an Uncontested Case?

- “You cant always get what you want, but get what you need.” – M. Jagger and K. Richards (1969)
- Very flexible process: it could be public comment hearing; it could look like a contested case hearing but without all the rights (for example, no cross examination of adverse witnesses but questions posed through presiding officer); it could be a paper submission process.
- Bid protests used to go to a truncated hearing process often with a outside hearing officer appointed by Treasurer.
- Today, most uncontested hearings heard on the papers with certifications and affidavits.
- No process for challenging most cannabis decisions.

EXCEPTIONS AND DISCIPLINE IN CIVIL SERVICE APPEALS

By: WilliamP. Hannan, Esq., Partner, Oxfeld Cohen, P.C.

This article focuses on the disciplinary appeal process for permanent employees in the career service whose positions and job titles are subject to the protections of N.J.S.A. Title IIA. Per N.J.A.C. 4A: 1-1.3, a "permanent employee" is an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period. [1]

Disciplinary Action -Two Types

- Major discipline (N.J.A.C. 4A:2-2):
  - o Removal;
  - o Disciplinary demotion; or
  - o Suspension or fine for more than five working days at any one time.

Note: No suspension or fine may exceed six months except for suspensions pending resolution of criminal matters. (N.J.A.C. 4A:2-2.4(a)).

Note: Although an employee with a regular appointment may be separated for unsatisfactory performance at the end of a working test period, they are subject to the disciplinary process in N.J.A.C. 4A:2-2, et seq. during the working test period. (N.J.A.C. 4A:4-5.4).

- Minor discipline (N.J.A.C. 4A:2-3):
  - o Formal written reprimand; or
  - o Suspension or fine of five working days or less.

Causes for Disciplinary Action

Per N.J.A.C. 4A:2-2.3, an employee may be subject to discipline for:

1. Incompetency, inefficiency, or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
4. Chronic or excessive absenteeism or lateness;
5. Conviction of a crime;

[1] Certain categories of employees are not protected by the Civil Service law, including those in the "unclassified service" (N.JA.C. 4A:4-1.3) and individuals with non-regular appointments (provisional, interim, temporary, emergency) (N.JA.C. 4A:4-7.1, et seq.)

6. Conduct unbecoming a public employee;
7. Neglect of duty;
8. Misuse of public property, including motor vehicles;
9. Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:71.1), including sexual harassment;
10. Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder;
11. Violation of New Jersey residency requirements as set forth in P.L. 2011, c. 70; and
12. Other sufficient cause.

The causes for disciplinary actions are the same for major and minor discipline.

Process for Major Disciplinary Action[1]

Preliminmy Notice of Disciplinary Action (PNDA)

A disciplinary action is instituted by the appointing authority filing a Preliminary Notice of Disciplinary Action (31-A form) against an employee. (N.J.A.C. 4A:2-2.5). The 31-A form gives the employee notice of the charges (cause for discipline) as well as the incident or specifications giving rise to the charge and the date(s) on which it/they occurred. The form also specifies what level of disciplinary action the appointing authority seeks to impose on the employee. The form contains instructions for requesting a departmental hearing before the appointing authority and the date for such hearing. PNDAs must be personally served on the employee or sent by certified or registered mail.

Note: An employee must be afforded the opportunity for a departmental hearing prior to the imposition of major discipline, except when they have been immediately suspended. An employee may be immediately suspended prior to a hearing when it is determined that the employee is (1) unfit for duty or is a hazard to any person if permitted to remain on the job, (2) that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services, or (3) when they have been charged with a crime of the first, second, or third degree, or a crime of the fourth degree on the job or related to the job. (N.J.A.C. 4A:2-2.5(a)).

Departmental Hearing and Final Notice of Disciplinary Action (FNDA)

An employee served with a PNDA may request a departmental hearing within five days of receipt of the PNDA. If no request is made, the departmental hearing is considered waived and the appointing authority may issue a Final Notice of Disciplinary Action. If a departmental hearing is requested, it must be held within 30 days of the PNDA, unless waived by the employee or a later date is agreed to by the parties(N.J.A.C. 4A:2-2.6).

2 Disciplinary processes differ slightly for police and fire employees.

Although departmental hearings are somewhat informal, the employee may be represented by an attorney or union representative. The hearing officer is designated by the appointing authority. The parties must have the opportunity to review evidence supporting the charges and to present and examine witnesses. Within 20 days of the departmental hearing, the appointing authority must make a decision on the charges and issue a Final Notice of Disciplinary Action (31-B form) to the employee. This is typically accompanied by a written decision by the hearing examiner as well. (N.J.A.C. 4A:2-2.6).

A FNDA form contains notice of the charges in the PNDA that were sustained, as well as the disciplinary action to be taken against the employee. (NJ.A.C. 4A:2-2.8). An appeal of the FNDA must be filed with the Civil Service Commission within 20 days of receipt by the employee. The date of receipt by the employee's union or attorney does not change this timeline. There is a $20 fee for disciplinary appeals.

Appeal to the Civil Service Commission

Once an appeal is filed, the Civil Service Commission transfers the file to the Office of Administrative law for a hearing as a contested case pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1: 1-1, et seq., and an administrative law judge is assigned to the case. The basic procedure/rules for an OAL hearing are as follows:

- The burden of proof in a Civil Service disciplinary appeal is on the appointing authority.
- The first event is typically a prehearing telephone conference, followed by the issuance of a prehearing order by the ALJ (N.J.A.C. 1: 1-13.1).
- Employees may be represented by attorneys or a non-lawyer representative. (N.J.A.C.:1-5.1).
- Discovery is limited to written interrogatories production of documents or things; permission to enter upon land or other property for inspection; and requests for admissions. (N.J.A.C. 1:1-10.2(b)).
- Depositions are rarely permitted, and only upon motion for good cause (N.J.A.C. 1: 110.2(c)).
- Discovery must be completed no later than 1 0 days before the first hearing date or by a date ordered by the ALJ (N.J.A.C. 1:1-10.4).
- Parties are not strictly bound by statutory or common law rules of evidence, and all relevant evidence is generally admissible unless its probative value is substantially outweighed by the risk that its admission will either (1) necessitate undue consumption of time or (2) create substantial danger of undue prejudice or confusion. (N.J.A.C. 1: 1-15.1).
- Principles of progressive discipline apply. (West New York v. Bock, 38 N.J. 500 (1962)).
- At the conclusion of a hearing, the ALJ must issue an initial decision within 45 days containing findings of facts and conclusions of law. N.J.A.C. 1:1-18.1(e)).
- Within 13 days from the mailing date of the initial decision, any party may file written exceptions with the Civil Service Commission. (N.J.A.C. 1:1-18.4).
- Within 45 days from the date of the initial decision, the Civil Service Commission may adopt, modify, or reject the initial decision. (N.J.A.C. 1: 1-18.6(a)).
- The Commission may reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to issues of credibility of lay witness testimony. (N.J.A.C. 1:1-18.6(b)).

- The Commission may not modify or reject any finding of fact as to issues of credibility of lay witnesses unless the ALI's findings are arbitrary, capricious, or unreasonable. (N.J.A.C. 1:1-18.6(c)).

- Appeals of a Civil Service Commission final decision must be filed with the Appellate Division within 45 days.

- Parties may settle a disciplinary appeal at any time. The ALJ will generally issue an initial decision approving the settlement agreement, and the Civil Service Commission will acknowledge the settlement agreement at a meeting. (N.J.A.C. 1:1-19.1).

- An employee appealing a disciplinary action can also withdraw their appeal at any time, and the file will be returned to the Civil Service Commission. (N.J.A.C. 1 :1-19.2).

Process for Minor Disciplinary Action

Appeals of minor disciplinary action are typically governed by negotiated agreement (N.J.A.C. 4A:2-3.2). In local service, an appointing authority may establish procedures for processing minor discipline and grievances. (N.J.A.C. 4A:2-3.1). Employees not covered by a negotiated agreement may request a departmental hearing. (N.J.A.C. 4A:2-3.2(b)). Appeals of minor discipline are normally done through the grievance process of a negotiated agreement, although some appeals of minor discipline are filed with the Civil Service Commission. (See N.J.A.C. 4A:2-3.7).

About the Panelists…

Paul P. Josephson is a Partner in Duane Morris LLP in the firm's Marlton, New Jersey, office, where he solves complex business problems for CEO's, elected officials and agency heads, typically in matters involving significant public interests, highly-regulated industries or novel legal issues. Also a team lead for the Cannabis Industry Group, he is a constitutional and legal regulatory litigator with decades of experience in the transportation, infrastructure and real estate sectors. Among other achievements he represented the Gateway Program Development Corporation on the $13 billion Hudson Rail Tunnel project.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the Southern and Eastern Districts of New York, Mr. Josephson is New Jersey Co-Chair of the Regional Plan Association, has served as a Trustee of the New Jersey Public Charter Schools Association and is former Policy Counsel for the New Jersey Cannabis Industry Association. He is Past Chair of the New Jersey State Bar Association Administrative Law Section and Past Co-Chair of the NJSBA Committee on Election Law. During his government service he served as Chief of Authorities for the New Jersey Governor, where he oversaw more than 50 state and bi-state agencies including the Port Authority of New York and New Jersey, New Jersey Transit and the New Jersey Turnpike Authority.

Mr. Josephson has lectured for ICLE and numerous professional organizations, and he is the author and co-author of articles which have appeared in the *New Jersey Law Journal*, *New Jersey Lawyer* and *Law360*. He has been quoted in Forbes, the Philadelphia Inquirer and several other newspapers and professional journals, and is a two-time recipient of the New Jersey Bar Association Distinguished Legislative Service Award and many other honors.

Mr. Josephson received his B.A. from the University of Michigan and his J.D., with honors, from The George Washington University Law School.

Andrew W. Li practices with the Comegno Law Group, P.C. in the firm's Moorestown, New Jersey, office, where he focuses in the representation of school districts across New Jersey. He provides legal counsel to districts, administrations and boards of education in school law matters including liability analysis, labor and employment issues, student matters, special education/IDEA matters, bidding and procurement, compliance with OPRA and OPMA requirements, board operations and policy, and "day to day" guidance.

Mr. Li is admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, the Third Circuit Court of Appeals and the United States Supreme Court. He is a member of the School Law Special Committee of the New Jersey State Bar Association, which monitors developments in education law, provides updates on those developments and recommends modifications to education law-related regulations.

Mr. Li received his law degree from Tulane University Law School.

Honorable Barry E. Moscowitz, ALJ was appointed Acting Director and Chief Administrative Law Judge in 2022, and sits in Trenton, New Jersey.

Judge Moscowitz has been an Administrative Law Judge since 2006 and has presided over contested cases transmitted from state agencies under the *Administrative Procedure Act*. In 2020, he became an Assignment Judge for Special Education, where he was responsible for the management of settlement conferences for special education cases and for the assignment of special education cases for due process hearings under the *Individuals with Disabilities Education Act*.

Judge Moscowitz received his B.A. from the University of Pennsylvania and his J.D. from Seton Hall University School of Law.

Arsen Zartarian is a Partner in the Oakland, New Jersey, office of Cleary Giacobbe Alfieri & Jacobs, LLC, where represents numerous boards of education throughout the state. Prior to joining the firm, he was Deputy General Counsel and Interim General Counsel of the Newark Board of Education, where he served as in-house counsel for 25 years.

Mr. Zartarian is Chair of the New Jersey State Bar Association School Law Special Committee, a Trustee and Past President of the New Jersey Association of School Attorneys (New Jersey School Boards Association) and an officer of the NJSBA's Labor and Employment Law Section. He frequently presents at statewide school and employment law seminars, and moderates the ICLE programs "Administrative Law Forum" and "Representing School Employees and Boards of Education in Employment Law Cases."

Mr. Zartarian received his undergraduate degree from Rutgers College, where he was Sports Editor of *The Daily Targum*. He received his law degree from Villanova University School of Law, where he was Case & Comments Editor of the *Villanova Law Review* and a national moot court competitor.