Volume 37

CHAPTER 1. INTRODUCTION

OCC.	
1.1	Administrative Law Is Procedural
1.2	Growth of Administrative Law
1.3	The Office of Administrative Law
1.4	Organization of The Executive Branch—Constitutional Requirements
1.5	Scope of the Statutory Framework for Executive Branch State Agencies
1.6	State Agency's Enabling Act—Three Branch Powers
1.7	Liberal Construction of Enabling Acts
1.8	State Agency's Enabling Act—Administrative Searches
1.9	Rulemaking, Adjudication and Informal Action
1.10	Separation of Powers—Generally
1.11	± **
1.12	Standards Necessary for the Legislature to Grant Authority to Agencies
1.13	Delegation of Powers by an Agency
1.14	Legislative Grant of Judicial–Like Powers
1.15	Limitations Upon the Grant of Judicial–Like Powers to Administrative Agencies
1.16	Administrative Hearings
1.17	8
1.18	Administrative Law Judge (ALJ) Appointment, Qualifications and Responsibilities
1.19	Administrative Law Judge (ALJ) Reappointment After Initial One Year Term
1.20	Conduct of Administrative Law Judges
Cl	HAPTER 2. RULEMAKINGS BY ADMINISTRATIVE AGENCIES
2.1	What Is a Rulemaking?
2.2	Definition of a Rule
2.3	Internal Management or Discipline Statements Are Not Rules
2.4	Intra Agency and Inter Agency Statements Are Not Rules
2.5	Agency Decisions and Findings in Contested Cases Are Not Rules
2.6	Attorney General Opinions Are Not Rules

2.7

2.8

Authority to Make Rules

Express and Implied Authority to Make Rules Liberal Construction of Rulemaking Authority

2.10 Agency Authority to Adopt Organizational and Procedural Rule

TABLE OF CONTENTS			
Sec.			
2.11	Reasons for Making Rules		
2.12	Implementing a Statute by Rule		
2.13	Agency Failure to Make Rules		
2.14	Overview of Rulemaking Process: Notice and Comment		
2.15	The Preproposal Process		
2.16	Negotiating a Rule		
2.17	Proposals of New Rules, Amendments, and Repeals of Existing Rules		
2.18	Regulatory Flexibility		
2.19	Exceeding Federal Standards		
2.20	Additional Notice for Proposals		
2.21	Adopting a Rule		
2.22	9		
2.23	0 0		
2.24	The Expiration or "Sunsetting" of Rules Under Executive Order No. 66 (1978)		
2.25	Readopting Emergency and Sunsetting Rules		
2.26	0 0		
2.27	Rule Appendices		
	CHAPTER 3. CHALLENGING AGENCY RULES		
3.1	The 1981 Amendments to the Administrative Procedure Act		
3.2	How to Challenge a Rule		
3.3	Validity of a Rule		
3.4	Attacking an Arbitrary or Capricious Rule		
3.5	Attacking Vague Rules		
3.6	Need for Standards		
3.7	Attacking an Unauthorized Rule		
3.8	Attacking Unconstitutional Rules		
3.9	Presumptions That Must Be Rebutted When Attacking a Rule		
3.10	Attacking a Procedurally Irregular Rule		
3.11	Attacking a Procedurally Irregular Rule for Failure to Comply With		
	Notice and Comment Requirements		

- 3.13 Rule Changes Upon Adoption
- 3.14 Curative Remand of Invalid Rules
- 3.15 Three Related Questions Involving the Administrative Procedure Act Rule Definition

3.12 Consequence of Failing to Submit Written Comments in a Rulemak-

- 3.16 When Agencies Choose Adjudication Over Rulemaking to Issue Policy Statements (Contrasting New Jersey With Federal Precedents)
- 3.17 Challenging a Policy Statement Issued in an Adjudication Because It Should Have Been Announced in a Rulemaking (Applying Metromedia, Inc. v. Director, Div. of Taxation)
- 3.18 Challenging an Agency's Adjudication Because the Agency Has Not Promulgated Standards to Guide Its Exercise of Discretion
- 3.19 Declaratory Ruling
- 3.20 Waiver of a Rule
- 3.21 Petition for a Rule
- 3.22 Executive Order No. 66

_	

- 3.23 Regulatory Oversight
- 3.24 Importance of the Register in Interpreting Rules
- 3.25 Interpreting Rules
- 2.26 Locating Rulemaking Records Filed With the Office of Administrative Law
- 3.27 Researching Rules in the New Jersey Register and New Jersey Administrative Code

CHAPTER 4. PREPARING FOR HEARING

- 4.1 Beginning a Contested Case
- 4.2 Pleadings—Generally
- 4.3 Time Limits for Filing
- 4.4 Amendment of Pleadings
- 4.5 The Contested Case Determination
- 4.6 The Administrative Procedure Act and Hearing Rights
- 4.7 The Meaning of "Contested" Cases
- 4.8 The Meaning of "Uncontested" Cases
- 4.9 Retention of Contested Cases for Hearing by Agency Head
- 4.10 Agencies Exempt From Assignment of Administrative Law Judges
- 4.11 Applicability of the Office of Administrative Law's Uniform Administrative Procedure Rules
- 4.12 Scope of the Office of Administrative Law's Uniform Administrative Procedure Rules
- 4.13 Special Rules Adopted by the Office of Administrative Law
- 4.14 Exempt Agencies and the Uniform Administrative Procedure Rules
- 4.15 Relaxation of Office of Administrative Law Rules
- 4.16 Returning a Contested Case to the Transmitting Agency
- 4.17 Agency Responsibility Before Transmittal to the Office of Administrative Law
- 4.18 Who May Represent a Party in Administrative Proceedings, Including Pro Se, Attorney, Pro Hac Vice and Law Student Representative
- 4.19 Non-Lawyer Representation
- 4.20 Non-Lawyers at Administrative Hearings and the Unauthorized Practice of Law
- 4.21 The Authority to Permit Non–Lawyer Representation in Administrative Hearings
- 4.22 Admission Application Process for Non-Lawyers
- 4.23 Appearance Without Representation
- 4.24 Appearances by Legislators as Attorneys before the Office of Administrative Law
- 4.25 Administrative Law Judges May Not Appoint Lawyers for Indigents
- 4.26 Retaining a Public Officer as a Respondent in a Contested Case After the Officer Dies or Leaves Office
- 4.27 Service of Pleadings and Other Papers
- 4.28 Proof of Service
- 4.29 Filing of Papers After the Pleadings
- 4.30 Filing by Facsimile Transactions
- 4.31 Transmission to the Office of Administrative Law

Sec.	
4.32	Clerk's Notices
4.33	
4.34	
	Inactive List
4.36	
4.37	
4.38	Consequences of Prehearing Order
4.39	Discovery—Generally
4.40	Right-to-Know Law and Common Law Right to Inspect Document
4.41	Discovery by Notice
4.42	Discovery in Conference Hearings
4.43	Depositions
4.44	Time for Discovery
4.45	Discovery Sanctions
4.46	Power to Issue Subpoenas
4.47	Subpoena Forms
4.48	Subpoena Service and Fees
4.49	Motions to Quash
4.50	Failure to Obey a Subpoena
4.51	Researching Administrative Cases
	CHAPTER 5. THE ADMINISTRATIVE HEARING
5.1	Administrative Hearings Are Generally Open to the Public
5.2	Electing to Close the Hearing
5.3	Recording the Hearing
5.4	Media Coverage in Administrative Hearings
5.5	Sealing the Record
5.6	Continuous Hearings—Expedition in Administrative Hearings
5.7	Sanctions for Failure to Appear
5.8	Sanctions for Failure to Comply With an Order of a Judge or With
	Uniform Administrative Procedure Rules Requirements
5.9	Types of Contested Case Hearings
5.10	Plenary Hearings
5.11	Conference Hearings
5.12	Telephone Hearings
5.13	Proceedings on the Papers
5.14	Settlement Conferences
5.15	Uncontested Case Proceedings
5.16	Mediation
5.17	Motion Practice
5.18	Motions for Summary Decision
5.19	Motions for Dismissal and Judgment
5.20	Emergency Relief
5.21	Intervention and Participation
5.22	Consolidation of Cases
5.23	Predominant Interest Determinations
5.24	The Process for Determining Predominant Interest Motions
5.25	Disqualification of Judges
5.26	The General Approach to Evidence at Administrative Hearings

_				
Sec.	And I made and			
5.27 5.28	Authentication The Major Course of Inadmissibility Involutions			
5.26 5.29	The Major Causes of Inadmissibility—Irrelevance Preliminary Evidence Inquiry by the Judge			
5.29 5.30	The Major Causes of Inadmissibility—Probative Value Outweighed			
5.31	Evidence Rules Conspicuous by Their Absence			
5.32	Official Notice			
5.32	Hearsay Evidence and the Residuum Rule			
5.34	Unobjected to Hearsay and the Residuum Rule			
5.35	The Residuum Rule Does Not Apply in Casino Control Cases			
5.36	Witnesses—Fact and Expert			
5.37	Expert Witnesses			
5.38	Privileges			
5.39	Beginning Administrative Evidentiary Hearings			
5.40	Quantum of Proof			
5.41	Swearing the Witness			
5.42	Interpreters			
5.43	Marshalling and Examining Witnesses			
5.44	Sequestration of Witnesses			
5.45	Cross-Examination			
5.46	Visiting the Scene of the Controversy			
5.47	Trying the Case Using Prior Transcribed Testimony			
5.48	Ex Parte Communications			
5.49	Proceeding With Administrative Hearings Despite Pending Criminal Prosecutions			
5.50	Immunity for Statements Made in Contested Cases			
	CHAPTER 6. THE ADJUDICATION PROCESS			
<i>C</i> 1	Clasing Anguments and the Submission of Briefs			
$6.1 \\ 6.2$	Closing Arguments and the Submission of Briefs Orders Compared With Initial Decisions			
6.2	Preparing Orders			
6.4	Interlocutory Review of Administrative Law Judge Rulings			
6.5	OAL Director as Agency Head to Adjudicate Some Issues Within			
0.0	Contested Cases			
6.6	Interlocutory Review or Exceptions to the Director of the Office of			
	Administrative Law			
6.7	Concluding the Hearing and Beginning the 45 Days Permitted to			
	Write an Initial Decision			
6.8	Initial Decisions—Generally			
6.9	Final in Form and Fully Dispositive of All Issues			
6.10	In Predominant Interest Cases			
6.11	Fact Finding			
6.12	Stare Decisis for Final Decisions			
6.13	Exceptions to Initial Decisions			
6.14	Roles of the Agency Head and the Administrative Law Judges			
6.15	Final Decisions—Generally			
6.16	Rejecting or Modifying the Initial Decision's Findings of Fact			
6.17	Review of the Record			
6.18	When the Passage of Time Causes the Initial Decision to Become the			

Final Decision

- 6.19 Extensions of Time Limits
- 6.20 Remanding Initial Decisions to the OAL
- 6.21 Time Requirements for Administrative Adjudication
- 6.22 Final Decisions by Administrative Law Judges
- 6.23 Final Decisions by Administrative Law Judges in Special Education Cases
- 6.24 Settlements
- 6.25 Withdrawals
- 6.26 Obtaining a Transcript
- 6.27 Collateral Estoppel
- 6.28 Double Jeopardy Is Inapplicable to Administrative Proceedings
- 6.29 Forfeiture of Public Office, Position or Employment Without a State Administrative Hearing
- 6.30 When an Agency May Pierce the Corporate Veil
- 6.31 Equitable Estoppel Against Agencies
- 6.32 Power to Reopen or Reconsider Administrative Adjudications

CHAPTER 7. JUDICIAL REVIEW

- 7.1 Judicial Review—Generally
- 7.2 Determining Whether Judicial Review Is Available
- 7.3 Is Review Permitted by Law?
- 7.4 Standing
- 7.5 Selecting and Notifying the Proper Respondents
- 7.6 Primary Jurisdiction
- 7.7 Exhaustion of Administrative Remedies
- 7.8 Exceptions to Exhaustion
- 7.9 Ripeness
- 7.10 Final Decisions or Rules of State Administrative Agencies May Be Appealed to the Appellate Division
- 7.11 To Review Interlocutory Decisions or Actions of State Administrative Agencies Leave to Appeal Must Be Granted by the Appellate Division
- 7.12 Appeal of Local Administrative Agency Action by Leave to the Appellate Division
- 7.13 Judicial Review of Agency Adjudications—The Record
- 7.14 Actions in Lieu of Prerogative Writs Against Local and State Administrative Agencies
- 7.15 Appeals Not in Lieu of Prerogative Writs From Local Agency Action
- 7.16 Presumptions Affecting the Standard of Judicial Review
- 7.17 The General Standard for Judicially Reviewing Agency Determina-
- 7.18 Judicial Review of Factual Errors in an Agency Rulemaking
- 7.19 The Standard for Judicially Reviewing Conclusions of Law in an Agency Adjudication
- 7.20 The Standard for Judicially Reviewing Findings of Fact in an Agency Adjudication
- 7.21 Substantial Credible Evidence and Agency Expertise
- 7.22 The Reviewing Court Distinguishing Between Facts and the Law— Ultimate Facts and Basic Facts

Sec.		
7.23	Agency Expertise and Ultimate Fact Finding	
7.24	The Standard for Judicially Reviewing a Sanction Imposed by an	
	Agency in an Adjudication	
7.25	The Agency Head's Findings and Conclusions Are Reviewed and Not	
	the Administrative Law Judge's	
7.26	Remands by an Appellate Court to a State Agency	
7.27	The State Board of Education Is the Ultimate Decision Maker in Almost All School Matters	
7.28	Stare Decisis in Administrative Decisions	
7.29	Agency Enforcement Actions	
7.30	Federal Review of State Administrative Action	
7.31	Exercising Federal Question Jurisdiction to Review State Administrative Action	
	APPENDICES	
A.	Administrative Procedure Act	
В.	Office of Administrative Law Enabling Act	
C.	Rules for Agency Rulemaking	
D.	Rulemaking Examples	
Ε.	Uniform Administrative Procedure Rules	
F.	Special Hearing Rules	
G.	Hearing Forms	
Η.	Organization of the Office of Administrative Law	
A.	Administrative Procedure Act	
В.	Office of Administrative Law Enabling Act	
C.	Rules for Agency Rulemaking	
D. E.	Rulemaking Examples Uniform Administrative Procedure Rules	
E. F.	Special Hearing Rules	
г. G.	Hearing Forms	
ы. Н.	Organization of the Office of Administrative Law	
11.	organization of the office of Administrative Law	
		Page
Tab	le of Cases	849
Tab	le of Laws and Rules	875
Inde	ex	887