

## SUBCHAPTER 5. CONDUCT OF APPEAL HEARING

### 19:42A-5.1 Conduct of appeal hearing

The Commission shall conduct appeal hearings in accordance with N.J.S.A. 5:12-107, the UAPR, the special hearing rules, and this chapter.

### 19:42A-5.2 Oral argument

(a) Any party may request an opportunity to orally present their appellate arguments. Such request must be made in writing at the time the Case Information Statement is filed and submitted to the Commission's Document Control Unit, ATTN: Hearings and Appeals Unit at the address specified in N.J.A.C. 19:42A-4.2(a).

(b) The Commission may grant a request for oral argument for good cause shown.

### 19:42A-5.3 Determination of appeal hearing procedure

(a) Upon timely receipt of a completed Case Information Statement, the Commission or its designated hearing examiner shall notify the parties that their appeal hearing will proceed as follows:

1. Where an opportunity to present oral argument is not requested, the appeal may be considered on the appeal record and any timely and relevant submissions of the parties, unless directed otherwise in accordance with the provisions of this chapter.

2. Where an opportunity to present oral argument is requested and granted, the appeal will be scheduled for oral argument before the hearing examiner, with the oral argument transcribed and made a part of the record on appeal.

3. Where an opportunity to present oral argument is requested and denied, the appeal will be considered on the appeal record and any timely and relevant submissions of the parties.

#### 19:42A-5.4 Evidence; new evidence

(a) The parties may agree by written stipulation that certain specified evidence may be admitted, pursuant to N.J.S.A. 5:12-107, although such evidence shall be otherwise subject to objection.

(b) The record on appeal may only be supplemented with new evidence upon motion of any party and a showing by the party seeking to supplement the record of one or more of the following:

1. Mistake, inadvertence, surprise, or excusable neglect;
2. Fraud, misrepresentation, duress, or other conduct of an adverse party; or
3. Any other reason consistent with the public policy of the Act and in the interests of

justice.

(c) The parties shall be notified by the Commission of the time and place such evidence will be taken.

#### 19:42A-5.5 Standard of review

Appeals of final actions shall be reviewed by the Commission *de novo* without regard to the factual and legal determinations of the Division hearing examiner.

19:42A-5.6 Appeal decision

Any appeal decision shall be considered a final order of the Commission, which shall constitute final agency action for purposes of establishing jurisdiction on appeal in the New Jersey Superior Court.