

LAW AND PUBLIC SAFETY

NEW JERSEY RACING COMMISSION

Horse Racing

Representation by Attorney

Proposed Repeal: N.J.A.C. 13:70-1.41

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-105.

Submit written comments by September 4, 2010 to:

Michael Vukcevich, Deputy Director
Department of Law and Public Safety
New Jersey Racing Commission
P.O. Box 088
Trenton, New Jersey 08625-0088

The agency proposal follows:

Summary

The New Jersey Racing Commission is proposing the repeal of N.J.A.C. 13:70-1.41, Representation by attorney. This rule established requirements for representation by attorneys in matters before the Commission or the Commission's stewards. The rule also established the Commission's position, as a party in a contested case, regarding consent to representation by attorneys not licensed in this State who seek to appear at the Office of

Administrative Law (OAL).

Changes to this rule are necessary to bring subsection (b) into conformance with New Jersey Court Rule R. 1:21-1, Who May Practice; Appearance in Court. In order to represent a horse-racing licensee before the Commission or its stewards, N.J.A.C. 13:70-1.41(b) requires attorneys licensed in New Jersey to apply for admission pro hac vice if they do not maintain a bona fide office for the practice of law in this State. However, R. 1:21-1(a) no longer limits the location of the required bona fide office to New Jersey. Pursuant to R. 1:21-1(a), attorneys licensed to practice law in New Jersey must maintain a bona fide office for the practice of law in any State, United States territory, Puerto Rico or the District of Columbia. As a result, N.J.A.C. 13:70-1.41 must be amended or repealed to the extent that it is inconsistent with the court rule.

Rather than proposing amendments to N.J.A.C. 13:70-1.41, the Commission has determined to propose the repeal of the rule. The Commission continues to receive negative comments since the adoption of this rule, as well as a legal challenge regarding the provision that limits the appearance pro hac vice of attorneys unlicensed in New Jersey to once per calendar year.

Having reviewed N.J.A.C. 13:70-1.41 and having considered the negative comments received in connection with this rule, the Commission has determined that this rule is not needed at this time. The Commission is therefore proposing the repeal of this rule.

The Commission is providing a 60-day comment period for the proposed repeal of this rule. Therefore, this notice is excepted from the rulemaking calendar requirements in accordance with N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed repeal of this rule will likely have neither a positive nor negative social impact. The proposed repeal restores the manner of handling requests to appear pro hac vice before the Commission's stewards to that which existed prior to the adoption of this rule. All requests from attorneys not licensed in New Jersey who seek to represent a licensee before the stewards must seek authorization to do so from the Executive Director. Admission pro hac vice before the Office of Administrative Law in appeals involving Commission licensees will continue to be governed by N.J.A.C. 1:1-5.2.

Economic Impact

The rule proposed for repeal will likely have neither a positive nor negative economic impact in this State. Attorneys unlicensed in this State, whose appearances before the Commission or the Commission's stewards will no longer be limited to once per year, may experience a limited economic benefit.

Federal Standards Statement

A Federal standards analysis is not necessary as there are no Federal standards or requirements applicable to, or affected by, the proposed repeal of this rule. The Commission proposes the repeal of this rule pursuant to its rulemaking authority set forth in N.J.S.A. 5:5-30.

Jobs Impact

The rule proposed for repeal will not result in the generation or loss of jobs in this State.

Agriculture Industry Impact

The rule proposed for repeal will have no impact on the agriculture industry in the State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rule proposed for repeal does not impose or affect any reporting, compliance or recordkeeping requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Smart Growth Impact

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

Housing Affordability Impact

The rule proposed for repeal will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the repeal would evoke a change in the average costs associated with housing because the proposed repeal concerns the practice of law before the Racing Commission.

Smart Growth Development Impact

The rule proposed for repeal will have an insignificant impact on smart growth and there is an extreme unlikelihood that the repeal of the rule would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rule proposed for repeal concerns the practice of law before the Racing Commission.

Full text of the rule proposed for repeal follows (deletions indicated in brackets [thus]):

13:70-1.41 [Representation by attorney] **(Reserved)**

[(a) In any matter before the Commission or its stewards prior to the determination that the matter is a contested case, a licensee may represent himself or herself or be represented

by an attorney authorized to practice law in this State. A licensee which is a corporate entity must be represented by an attorney authorized to practice law in this State.

(b) 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 here, may, upon application to and at the discretion of the Executive Director, be admitted once per calendar year to appear pro hac vice in a matter pending before the Commission or its stewards.

1. Admission before the Commission pro hac vice shall be by motion of an attorney authorized to practice in New Jersey on the form prescribed by N.J.A.C. 1:1-5.2(a)1.

2. The 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 New Jersey Court Rule 1:21-2(a). He or she shall also agree in the affidavit to comply with the dictates of New Jersey Court Rule 1:21-2(b).

(c) In a matter pending before the Office of Administrative Law, the Deputy Attorney General representing the Commission shall not consent to the appearance of any attorney seeking admission pro hac vice, who has already appeared once before the Commission or its stewards pursuant to (b) above or at the Office of Administrative Law, in a matter involving the Commission in that calendar year.]