

(d) Within 10 days after the entry of default, the Director shall serve notice of the entry of default and supporting affidavit upon the respondent. The notice shall inform respondent that the case will be transmitted to the OAL for hearing on a default basis and that transmittal will occur 20 days after receipt by respondent of the notice of entry of default. The notice shall also inform respondent of the opportunity provided by N.J.A.C. 13:4-5.3 for petitioning the Director to vacate the entry of default.

(e) Twenty days after respondent receives notice of the entry of default the Director shall transmit the case to OAL for the purpose of a hearing on the complainant's proofs of the allegation of discrimination on a default basis in accordance with N.J.A.C. 13:4-5.4.

13:4-5.3 Vacation of default

(a) At any time after entry of default and before transmittal of the case to OAL, the respondent may petition the Director who may vacate the entry of default and reopen the case for good cause shown. The respondent's assertion of good cause shall be in affidavit form and shall include the full and complete answers to the verified complaint and all request for information or documents.

(b) As a condition of vacating the default, the Director may order the respondent to pay costs or reasonable expenses, including attorney's fees, to the State of New Jersey or an aggrieved representative or party.

(c) If the Director vacates the entry of default at any time prior to the date of transmittal of the case to the OAL, the verified complaint shall instead proceed to an investigation finding as to probable cause, and where appropriate, conciliation or public hearing as provided by these rules.

(d) After transmittal of the case to OAL, a motion to vacate a default shall be directed to the Administrative Law Judge pursuant to N.J.A.C. 1:1.

13:4-5.4 Default hearing and final order

(a) At a default hearing, the proofs shall consist of the order of entry of default, the supporting affidavit and any other evidence proffered by the complainant, and the only cognizable issues shall be whether the facts established by the complainant and admitted by respondent constitute an act of discrimination, and if so, the amount of damages or other recommended relief. No evidence proffered by the respondent shall be admitted at a default hearing.

(b) After receiving the initial decision of the administrative law judge, the Director shall enter a final order pursuant to N.J.S.A. 10:5-17.

(c) If discrimination is found by the Director, the final order shall require the respondent to take any affirmative action which in the judgment of the Director is necessary to

both eliminate any discrimination and make the complainant whole.

(d) The order described in (c) above shall be the only final order provided for by this rule; all other orders provided by this rule shall be interlocutory in nature.

SUBCHAPTER 6. ADMINISTRATIVE DISMISSALS

13:4-6.1 Administrative dismissals

(a) The Director may, in his or her discretion, administratively dismiss verified complaints for reasons including, but not limited to, the following:

1. Lack of jurisdiction;
2. The complainant is unavailable or unwilling to participate in conciliation or investigation, or to attend a hearing;
3. Relief is precluded by the respondent's absence or other special circumstances;
4. The complainant has initiated an action in Superior Court pursuant to N.J.S.A. 10:5-13;
5. The verified complaint was not timely filed pursuant to N.J.S.A. 10:5-13;
6. The verified complaint, on its face, fails to state a claim for relief under the New Jersey Law Against Discrimination or Family Leave Act, N.J.S.A. 10:5-1 et seq.; or
7. The failure by the complainant to accept reasonable offers to resolve the allegations in the verified complaint.

(b) In determining whether to administratively dismiss a verified complaint pursuant to (a)7 above, the Director will take the following factors into account:

1. Probability of success after full investigation and hearing;
2. Reasonableness of offer;
3. Reasonableness of complainant's refusal, if any;
4. The amount of complainant's economic loss, and respondent's degree of responsibility therefor;
5. The evidence of the amount of complainant's mental pain and suffering;
6. The egregiousness of the discrimination charged; and
7. Whether the public interest is best served by the continuation of the proceedings.

(c) Prior to administratively dismissing a case pursuant to (a)7 above, the Director shall notify the complainant of the

reason for the dismissal, and shall offer the complainant the opportunity, pursuant to N.J.S.A. 10:5-13, to transmit the action to the Office of Administrative Law and to present the action by himself or herself, or through his or her own counsel at the hearing. If the complainant does not request such transmittal of the case within 30 days of the notice by the Division, the matter will be administratively dismissed. When a complainant files a request with the Division for transmittal pursuant to this section, the complainant thereby waives any right to have an attorney for the Division prosecute the verified complaint, and the other procedures and requirements set forth at N.J.A.C. 13:4-11.1 apply.

SUBCHAPTER 7. MOTIONS AND OTHER CASE ACTIONS

13:4-7.1 Motions

(a) The procedure governing all motions made prior to transmittal of a case to the Office of Administrative Law shall be in accordance with the rules governing the New Jersey courts, except where otherwise provided under these rules. After transmittal, the procedure shall be in accordance with N.J.A.C. 1:1.

(b) All complainants and respondents, as well as the Division, may file motions.

(c) Unless otherwise provided in this chapter, opposing parties to a motion shall file and serve responsive papers no later than 10 days following receipt of the motion. The moving party may file and serve further papers responding to any matter raised by the opposing party no later than five days after receipt of the responsive papers.

13:4-7.2 Motions to intervene

(a) Prior to transmittal of a case to the Office of Administrative Law, any person interested in or associated with the matters alleged in a verified complaint may file an original and two copies of a motion to intervene and shall serve an additional copy on each respondent and complainant by registered or certified mail, return receipt requested.

(b) Copies of said motion shall be filed and served together with supporting affidavits and briefs.

(c) Following transmittal of a case to the Office of Administrative Law, motions to intervene shall be made pursuant to N.J.A.C. 1:1-12.

13:4-7.3 Motions for consolidation or severance of verified complaint

(a) Whenever the Director deems it necessary, he or she may order that any verified complaint filed with the Division and any proceedings which may have been initiated with respect thereto be consolidated with or severed from any

other verified complaint which may have been instituted with the Division.

(b) Following transmittal of a case to the Office of Administrative Law, all motions to sever or consolidate shall be initially presented to the OAL, pursuant to N.J.A.C. 1:1. Subject to the requirements of N.J.S.A. 10:5-13, requests for consolidation of cases pending before the Division with cases pending before OAL but involving the jurisdiction of other agencies shall be handled in accordance with N.J.A.C. 1:1.

13:4-7.4 Motions for reconsideration

(a) Any party may, within 30 days after the service of a finding of probable cause or no probable cause or other final order of the Director, file a motion for reconsideration seeking review of the agency's decision and/or the reopening of the record for further investigation. The motion shall be in writing and state the grounds upon which relief is sought. The motion shall be served upon all opposing parties in accordance with N.J.A.C. 13:4-7.5, following which each opposing party may, within 10 days following service of the motion, file a response to the motion. The Director may grant such motion and vacate or modify the order, and/or reopen the record upon showing of the following:

1. Mistake, inadvertence, surprise, or excusable neglect;
2. Fraud, misrepresentation or other misconduct of an adverse party;
3. Newly discovered evidence, which the moving party can demonstrate is reasonably likely to change the final decision of the Director and which by due diligence could not have been discovered in time to be presented at the hearing or during the investigation of the matter; or
4. Any other reason consistent with the public policy of the Law Against Discrimination or Family Leave Act and in the interest of justice.

(b) No motion filed pursuant to this section, and no order granting such motion, shall suspend the operation of any final Director's order unless otherwise specified by order of the Director.

13:4-7.5 Service of motions and other pleadings

(a) Prior to transmittal to OAL, unless otherwise instructed by the Director, every motion and every written notice, brief or memorandum of law shall be served by the filing party by mailing copies to all parties, by registered or certified mail, return receipt requested or by overnight mail by commercial courier, within three days of said filing.

(b) Such documents shall not be deemed served until an affidavit of mailing to all other parties is filed with the Division at the time of or subsequent to filing the pleading.