

**CHAPTER 45**

**ADMINISTRATIVE HEARINGS IN DIVISION OF CONSUMER AFFAIRS**

**Authority**

Unless otherwise expressly noted, all provisions of this Chapter 45 were adopted by the Division of Consumer Affairs pursuant to authority delegated at N.J.S.A. 56:8-3.1 and were filed and became effective November 1, 1971, as R.1971 d. 196. See: 3 N.J.R. 261(b).

**Chapter Expiration Date**

Chapter 45, Administrative Hearings in Division of Consumer Affairs, expires on July 1, 2006.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**13:45-1.1 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 New Jersey Consumer Protection Act, N.J.S.A. 56:8-1 et seq. as amended and/or supplemented, or any regulation adopted thereunder.

“Attorney for the division” means an attorney appointed or assigned by the Attorney General of New Jersey to represent and render legal services to the Division of Consumer Affairs.

“Complainant” means any person including the Attorney General or the director, alleging an unlawful practice within the meaning of the act.

“Director” means the Director of the Division of Consumer Affairs.

“Division” means the Division of Consumer Affairs, Department of Law and Public Safety.

“Hearing examiner” means any person designated by the Attorney General or the director to conduct any hearing alleging violations of the act.

“Respondent” means any person charged with an unlawful practice under the act.

As amended, R.1977 d. 93, eff. March 17, 1977.  
See: 9 N.J.R. 184(a).

**13:45-1.2 Scope**

The following rules shall constitute the practice and procedure and shall govern all contested cases as defined by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-2(b), before the Division of Consumer Affairs, where a violation of the act is alleged.

As amended, R.1977 d. 93, eff. March 17, 1977.  
See: 9 N.J.R. 184(a).

**13:45-1.3 Construction**

(a) These rules shall be liberally construed to permit the Division of Consumer Affairs to discharge its statutory functions.

(b) The director or the director's representative may, upon notice to all parties, relax the application of these rules where the interest of justice will be served thereby.

As amended, R.1977 d. 93, eff. March 17, 1977.  
See: 9 N.J.R. 184(a).

**13:45-1.4 Practice where rules do not govern**

(a) The director may rescind, amend or expand these rules from time to time, provided the same is effected in accordance with the provisions of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) In any matter not expressly controlled by these rules or by statute, the director shall exercise discretion.

As amended, R.1977 d. 93, eff. March 17, 1977.  
See: 9 N.J.R. 184(a).

## SUBCHAPTER 2. JURISDICTION

### 13:45-2.1 Subject matter jurisdiction

(a) The jurisdiction of the division shall extend to all sales or advertisements for the sale of merchandise between a consumer and a merchant.

(b) For the purpose of applying this rule, a "merchant" is a person as defined by N.J.S.A. 56:8-1(d) engaged in the business of selling merchandise as defined by N.J.S.A. 56:8-1(c).

(c) For the purpose of applying this rule, a "consumer" shall be a person as defined by N.J.S.A. 56:8-1(d) who purchases merchandise for personal or private use or for profit.

(d) A sale of merchandise between two private individuals shall not be deemed to be within the jurisdiction of the Division of Consumer Affairs.

As amended, R.1977 d. 93, eff. March 17, 1977.  
See: 9 N.J.R. 184(a).

### 13:45-2.2 Procedure where division is without jurisdiction

Whenever it shall appear that the division is without jurisdiction over a consumer complaint, the complaint shall be so advised, and where possible, the complaint shall be forwarded to the appropriate local, State or Federal agency for further action.

## SUBCHAPTER 3. COMMENCEMENT OF FORMAL ADMINISTRATIVE PROCEEDINGS

### 13:45-3.1 Notice of hearing and complaint

(a) Whenever it shall appear to the director that a violation of the act has occurred, is occurring or may occur and that the matter warrants a formal administrative hearing to effectuate the policies underlying said act, the director may cause to be issued a notice of hearing and complaint seeking any relief authorized by the act.

(b) The complaint shall be returnable in not less than five nor more than 30 days from the date of service thereof.

(c) The complaint shall be directed to the respondent and shall be served in accordance with these rules.

(d) The notice of hearing shall contain:

1. A statement of the time and place of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A statement that the respondent may present evidence in defence to the charges contained in the complaint, either through an attorney or personally;
4. A statement that should the respondent fail to appear a default will be entered and the complainant will proceed with proofs in support of the relief demanded;
5. A statement that adjournments will not be granted except on timely written application to the director and for good cause shown. Said statement shall also contain notice that in the event an adjournment is granted, any expenses incurred by the division as a result thereof may be taxed to the respondent as a condition for granting the adjournment.

(e) A complaint issued by the director shall contain:

1. A reference to the particular sections of the statute or rule alleged to have been violated;
2. A short and plain statement of the facts giving rise to the alleged statutory or rule violation;
3. A statement of the relief sought by the complainant.

As amended, R.1977 d. 93, eff. March 17, 1977.  
See: 9 N.J.R. 184(a).

### 13:45-3.2 Service of notice of hearing and complaint

(a) Service of a notice of hearing and complaint shall be made as follows:

1. Where the respondent is an individual, by personally delivering a copy of the notice of hearing and complaint, or by leaving copies thereof at the respondent's dwelling house or usual place of abode with a competent household member of the age of 14 years or over then residing therein, or by delivering copies thereof to a person authorized by appointment or by law to receive service of process on the respondent's behalf. Where such service cannot be obtained, substituted service therefor may be made in the following manner:
  - i. Personal service thereof without this State; or
  - ii. The mailing thereof by certified mail, return receipt requested, in the last known place of business, residence or abode within or without this State of such person for whom the same is intended;