

CHAPTER 4
RULES OF PRACTICE AND PROCEDURE

Authority

N.J.S.A. 10:5-1 to 49, specifically 10:5-8g.

Source and Effective Date

R.2000 d.503, effective November 20, 2000.
See: 32 N.J.R. 3716(a), 32 N.J.R. 4452(a).

Executive Order No. 66(1978) Expiration Date

Chapter 4, Rules of Practice and Procedure, expires on November 20, 2005.

Chapter Historical Note

Chapter 4, Rules of Practice and Procedure, was adopted and became effective prior to September 1, 1969.

Subchapter 13, Proposed Findings and Final Order, was repealed by R.1985 d.697, effective January 21, 1986. See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Pursuant to Executive Order No. 66(1978), Chapter 4, Rules of Practice and Procedures, was readopted as R.1991 d.67, effective January 17, 1991. See: 22 N.J.R. 3689(a), 23 N.J.R. 608(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Rules of Practice and Procedures, was readopted as R.1996 d.42, effective December 20, 1995. See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

13:4-1.1 Scope of rules

The following provisions shall constitute the practice and procedure and shall govern all proceedings in the Division on Civil Rights. When a case is transmitted to the Office of Administrative Law, or the Director elects to hear the contested case, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1, et seq., shall govern proceedings in

that case. Whenever these rules refer to procedures to be followed after transmittal to the Office of Administrative Law, such references shall also be deemed to apply to instances where the Director elects to hear a contested case pursuant to N.J.S.A. 52:14F-8.

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added text "Where a case . . . to N.J.S.A. 52:14F-8."

Case Notes

Notice provisions of New Jersey's Tort Claims Act do not apply to claims under the New Jersey law against discrimination. *Fuchilla v. Layman*, 109 N.J. 319, 537 A.2d 652 (1988), certiorari denied 109 S.Ct. 75, 488 U.S. 826, 102 L.Ed.2d 51.

13:4-1.2 Liberal construction of provisions

(a) These provisions shall be liberally construed by the Director to permit the Division on Civil Rights to discharge its statutory functions and to secure just and expeditious determinations of all matters before the Division on Civil Rights.

(b) The Director may, upon notice to all parties, in the interest of justice, relax the application of these rules.

Case Notes

Application of the interrogatory default procedure rule may be relaxed by the Director in the interest of justice. *General Motors Corp. v. Blair*, 129 N.J.Super. 412, 324 A.2d 52 (App.Div.1974).

13:4-1.3 Practice where rules do not govern

(a) The Director may rescind, amend or expand these rules from time to time as necessary to comply with N.J.S.A. 10:5-1, et seq., and such new rules shall be filed with the Office of Administrative Law.

(b) In any matter that arises not governed by these rules, the Director shall exercise his or her discretion.

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

"Office of Administrative Law" substituted for "Secretary of State."

13:4-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Administrative law judge" means any person appointed pursuant to N.J.S.A. 52:14F-5(1).

"Attorney for the Division" means an attorney appointed or assigned by the Attorney General of New Jersey.

"Bureau Chief" means an executive employee of the Division on Civil Rights who shall exercise such powers of the Division as the Director may from time to time delegate to him or her.

"Complainant" means any person alleging discrimination under the Law Against Discrimination. (N.J.S.A. 10:5-1 et seq.)

"Director" means the Director of the Division on Civil Rights who shall act for the Attorney General of New Jersey as chief executive officer of the Division in his or her place and with his or her powers.

"Division" means the State Division on Civil Rights, Department of Law and Public Safety.

"Investigator" means any employee of the Division designated under the Department of Personnel as "Investigator, Division on Civil Rights."

"Office of Administrative Law" or "OAL" refers to the agency created by N.J.S.A. 52:14F-1 et seq.

"Office of the Division" means the offices located at 31 Clinton Street, Newark, New Jersey; 100 Hamilton Plaza, Paterson, New Jersey; 140 East Front Street, Trenton, New Jersey; One Port Center, 2 Riverside Drive, Camden, New Jersey; 26 South Pennsylvania Avenue, Atlantic City, New Jersey; and any additional offices which may from time to time be established.

"Respondent" means any party charged with unlawful discrimination under the Law Against Discrimination. (N.J.S.A. 10:5-1 et seq.)

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Deleted definitions and added new.

Amended by R. 1991 d.67, effective February 19, 1991.
See: 22 N.J.R. 3689(a), 23 N.J.R. 608(a).

Definition of "field investigator" changed to "investigator", addresses corrected at "Office of the Division".

Amended by R.1995 d.243, effective May 15, 1995.
See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Amended by R.2000 d.503, effective December 18, 2000.
See: 32 N.J.R. 3716(a), 32 N.J.R. 4452(a).

Change of address for The Office of the Division.

Case Notes

Chief of enforcement bureau designated to conduct fact-finding conference could not conduct adjudicatory hearing under statutes permitting agency head to send case to Office of Administrative Law for adjudicatory hearing. *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Fact-finding conference could be employed solely as an investigative technique and not for adjudicatory purposes. *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Private clubs closely associated with public university did not have the right to a hearing before an administrative law judge prior to the transfer of their case to Office of Administrative Law. *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

An administrative official could not resolve disputed adjudicative facts without a trial-type hearing. *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

A proceeding to determine the existence of probable cause was an initial threshold procedure to determine whether the matter should be brought to a halt. *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

SUBCHAPTER 2. INVESTIGATIONS

13:4-2.1 Director’s investigations

(a) The Director, pursuant to N.J.S.A. 10:5-6; 10:5-8c, g, h, i, j; 10:5-9.1, may, on his or her own motion or on the motion of any person entitled to be a complainant under N.J.A.C. 13:4-3.3, conduct investigations to determine the extent to which industries, groups of industries, business persons, or groups of business persons, or other persons or groups of persons are complying with the Law Against Discrimination.

(b) In the conduct of such investigations, all investigatory powers granted by N.J.S.A. 10:5-8h-j shall be available to the Director.

(c) In connection with an investigation of the operation of any real property, as defined by N.J.S.A. 10:5-5n. the Director may require the submission of information concerning the race, creed, color, national origin, ancestry, handicap, marital status, sex, nationality, affectional or sexual orientation or familial status of the occupants of such real property, the terms and conditions on which the sale or lease of said real property is to be made to the general public, the vacancy rate of such real property subject to rent, the plans for advertising or notifying the public of the availability of said real property for rental or sale, the standard form documents used in the rental or sale of such real property, and such other information as may be reasonably necessary to carry out the provisions of the Law Against Discrimination.

(d) In connection with an investigation of any employer as defined by N.J.S.A. 10:5-5(e), the Director may require the submission of information concerning:

1. The race, creed, color, national origin, handicap, ancestry, age, marital status, sex, nationality, affectional or sexual orientation, atypical hereditary cellular or blood trait or military status of employees;
2. The employment records of employees;
3. The procedures for advertising or notifying the public of the availability of jobs;
4. The procedures for hiring or selecting employees;

5. The testing, seniority, promotion and discharge procedures; and

6. Such other information as may be reasonably necessary to carry out the provisions of the Law Against Discrimination.

(e) An investigation by the Division may be conducted either prior to or subsequent to the filing of a complaint.

As amended, R.1970 d.94, eff. August 5, 1970.
 See: 2 N.J.R. 76(b).
 R.1972 d.122, eff. June 26, 1972.
 See: 4 N.J.R. 195(a).
 Amended by R.1985 d.697, effective January 21, 1986.
 See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).
 Added words “creed, handicap, and nationality”.
 Amended by R. 1991 d.67, effective February 19, 1991.
 See: 22 N.J.R. 3689(a), 23 N.J.R. 608(a).
 Statutory cite corrected.
 Amended by R.1995 d.243, effective May 15, 1995.
 See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Case Notes

Lay teacher’s maintenance of sex and age discrimination lawsuit against Catholic high school was not unconstitutional excessive entanglement between government and religion in violation of establishment clause. *Gallo v. Salesian Soc., Inc.*, 290 N.J.Super. 616, 676 A.2d 580 (A.D. 1996).

13:4-2.2 Discovery procedure for Director’s investigations

All investigatory and discovery powers which the Division may otherwise utilize in the investigation of complaints as set forth in N.J.S.A. 10:5-1 et seq., and in these rules of practice and procedure at Subchapter 8 (Depositions and Interrogatories) and 9 (Subpoenas), including, but not limited to, the power to issue subpoenas, take depositions and serve interrogatories, may be utilized in the discretion of the Director during an investigation.

Case Notes

Held that State Supreme Court affirmation of finding, that employee charging discrimination was fired for cause, was not res judicata. *Wood v. Garden State Paper Co., Inc.*, 577 F.Supp. 632 (D.N.J.1983).

13:4-2.3 Fact-finding conference

(a) Fact-finding, as part of an investigation in a discrimination complaint, is subject to the following:

1. As part of its investigation, the Division may convene a fact-finding conference for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement. The fact-finding conference is not an adjudication of the merits of the complaint.

2. The Division shall provide the parties with written notice of the conference. Said notice shall identify the individuals requested to attend on behalf of each party, and any documents which any party is requested to provide within the specified time frame.

(b) The conference shall be conducted as follows:

1. The Division employee acting as fact-finder shall conduct and control the proceedings.

2. Upon prior notice to the Division, the parties may bring witnesses to the conference in addition to those whose attendance may be specifically requested by the Division, but the fact-finder shall have discretion over which witnesses shall be heard and the order in which they are heard. The fact-finder may exclude any witness or other person from the conference not limited to those who are not giving evidence, except that one representative of each party and counsel shall be permitted to remain throughout.

3. The Division may request the parties to provide affidavits from witnesses who appear at the fact-finding conference.

4. A party may be accompanied at a fact-finding conference by his/her attorney or another representative, and by a translator, if necessary.

5. An attorney for a party who has not previously entered his or her appearance shall do so at the outset of the conference.

6. Because the fact-finding conference is a means of investigation and not a hearing on the merits of a case, the parties shall not be entitled to cross-examine witnesses. All questioning shall be conducted by the fact-finder, unless in his or her discretion the fact-finder permits questions to be asked by other persons present at the conference.

7. During the conference, the fact-finder may allow a recess to permit the parties to discuss settlement.

(c) A record of the fact-finder conference shall be discovered as follows:

1. Following a Finding of Probable Cause or No Probable Cause, any reports of factual statements made at the fact-finding conference shall be discoverable by the parties.

2. Any records made of settlement discussions during the conference shall not be discoverable.

(d) Postponements of a fact-finding conference shall be subject to the following:

1. Postponements of a scheduled fact-finding conference will be granted only for good cause shown. Parties are discouraged from requesting adjournment from fact-finding conferences. Requests for adjournments should be directed to the branch manager. Except in extraordinary circumstances, requests for adjournments must be made, upon notice to all parties at least 10 working days prior to the conference.

2. If a party does not appear at a fact-finding conference without obtaining a postponement, the Division may proceed with the conference without the party.

(e) If the respondent or the complainant refuses or fails to attend a scheduled fact-finding conference, the Division may schedule an alternate conference date. The Division may subpoena any party or witness who has failed to attend the initially scheduled fact-finding conference. The Division may also subpoena any documents which either party was requested to bring, and fails to bring, to the fact-finding conference.

R.1983 d.385, September 19, 1983.

See: 15 N.J.R. 500(a), 15 N.J.R. 1604(a).

Amended by R. 1991 d.67, effective February 19, 1991.

See: 22 N.J.R. 3689(a), 23 N.J.R. 608(a).

Editorial change only.

Case Notes

Any person who files a complaint in the Division of Civil Rights must have a fair opportunity to review and respond to all submissions opposing the claim before the Director considers a dismissal. *Davis v. American Honda Motor Co.*, 368 N.J.Super. 333, 845 A.2d 1278.

Division of Civil Rights was required to provide complainant, who had filed physical handicap discrimination complaint against employer, with written notice of fact-finding conference once Division elected to have the fact-finding conference, allow complainant to participate in such conference, and provide complainant an opportunity to review and respond to all submissions opposing her claim, as provided for in rules and regulations regarding Division's proceedings, before Director of Division could consider a dismissal. *Davis v. American Honda Motor Co.*, 368 N.J.Super. 333, 845 A.2d 1278.

It was not violation of due process to accord administrative determination, which had been affirmed by appellate division, full faith and credit. *Pittman v. La Fontaine*, D.N.J.1991, 756 F.Supp. 834.

Election to litigate her sexual harassment complaint through administrative procedure precluded employee from pursuing Title VII action in federal court. *Pittman v. La Fontaine*, D.N.J.1991, 756 F.Supp. 834.

Age discrimination law did not violate due process. *Ferrara v. Tappan Co.*, D.N.J.1989, 722 F.Supp. 1204.

Remand to Division on Civil Rights was required to determine whether student who obtained restraining order was prevailing party entitled to award of counsel fees. *Balsley by Balsley v. North Hunterdon Regional School Dist. Bd. of Educ.*, 117 N.J. 434, 568 A.2d 895 (1990).

High school student who brought successful sex discrimination claim before Commissioner of Education was entitled to seek award of counsel fees. *Balsley by Balsley v. North Hunterdon Regional School Dist. Bd. of Educ.*, 117 N.J. 434, 568 A.2d 895 (1990).

Chief of enforcement bureau designated to conduct fact-finding conference could not conduct adjudicatory hearing under statutes permitting agency head to send case to Office of Administrative Law for adjudicatory hearing. *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

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SUBCHAPTER 3. COMMENCEMENT OF ACTION

13:4-3.1 Manner actions commenced

Any action may be commenced by the filing of a verified complaint at the offices or with any official or field investigator of the Division.

Amended by R.1985 d.697, effective January 21, 1986.
 See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).
 Substituted "investigator" for "representative".

Case Notes

Action held commenced within statutory 180 day period following discriminatory act due to continuing nature of the discrimination and the lack of prejudice to the respondent caused by the slightly out-of-time filing of the verified complaint. *Decker v. Bd. of Educ., City of Elizabeth*, 153 N.J.Super. 470, 380 A.2d 285 (App.Div.1977), certification denied 75 N.J. 612, 384 A.2d 842 (1978).

Limitations period for filing discrimination complaint was tolled by erroneous advice given complainant at time of filing. *Opatut v. Colts Neck Inn*, 95 N.J.A.R.2d (CRT) 93.

13:4-3.2 Preparing complaints

(a) The Division shall aid the complainant in the completion of the complaint except where aid is refused by the complainant or where the complainant appears at an office of the Division or before an officer of the Division with a completed complaint.

(b) Any person filing a complaint with the Division may file by submitting a single copy.

(c) If the complainant does not file at least two additional copies of the complaint and additional copies for each of the respondents, the Division shall duplicate enough copies of the complaint to insure the presence of the requisite number of copies.

Amended by R.1985 d.697, effective January 21, 1986.
 See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).
 Change heading.
 Amended by R.1996 d.42, effective January 16, 1996.
 See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

13:4-3.3 Filing complaints and other pleadings; notices

(a) A complaint shall be deemed filed on the date it is received in any office of the Division, or on the date it is received by any official or field investigator of the Division.

(b) All pleadings may be filed in any office of the Division.

(c) The filing of a complaint or any other pleading shall be proven by the official stamp of the Division or by the signature of any official, employee or field investigator and his or her written notation indicating the date of receipt.

(d) Pleadings may be filed by submitting a single copy. The Division shall insure the distribution of the requisite number of copies of the pleadings.

(e) Upon receipt of the complaint, the Division shall provide the complainant with a form adopted by the Director, which notifies the complainant of his or her rights under the Law Against Discrimination, including the right to file a complaint in the Superior Court of New Jersey and be heard before a jury; the jurisdictional limitations of the Division; and any other provisions of the Law Against

Discrimination that may apply to the complaint. The jurisdictional limitations of the Division include the limitation of the Division on Civil Rights to only administer claims under the Law Against Discrimination, and the inability of the Division on Civil Rights to afford parties the opportunity of a jury trial in discrimination claims heard before the Office of Administrative Law.

Amended by R.1985 d.697, effective January 21, 1986.
 See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Changed heading.
 Amended by R.1995 d.243, effective May 15, 1995.
 See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).
 Amended by R.1996 d.42, effective January 16, 1996.
 See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

In (b) substituted "pleadings may" for "other pleadings shall" and in (d) deleted "other than the complaint" following "Pleadings".

Case Notes

Employment discrimination claim was time-barred. *Walden v. Hiram Walker, Inc.*, 92 N.J.A.R.2d (CRT) 95.

13:4-3.4 Form of complaints

(a) A complaint shall be filed upon a printed form approved by the Director.

(b) The complaint shall be entitled in the Department of Law and Public Safety, Division on Civil Rights, and shall set forth in the caption the names of the complainants and respondents.

Amended by R.1985 d.697, effective January 21, 1986.
 See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Deleted text "or upon legal-size paper, and shall be typewritten or printed."

13:4-3.5 Contents of complaint

(a) The complaint shall set forth in separate numbered paragraphs the following:

1. The full name and address of all complainants;
2. The full name and address of all respondents, if known;
3. A statement of the specific prohibited basis or bases set forth in the LAD that gave rise to the alleged discrimination;
4. A brief statement setting forth the facts deemed to constitute the alleged discrimination;
5. The section of the Law Against Discrimination allegedly violated;
6. A statement giving all pertinent facts as to whether any other action, either criminal or civil, has been instituted in the matter. Complainant shall notify the Division if at any time during the pendency of the complaint, he or she files a complaint with any other agency or court concerning the matter which is the subject of the Verified Complaint;

7. Notarized signature and verification by the person or persons filing the complaint.

8. The county in which the alleged discrimination took place.

As amended, R.1970 d.94, eff. August 5, 1970.
See: N.J.R. 76(b).

As amended, R.1972 d.122, eff. June 26, 1972.
See: 4 N.J.R. 195(a).

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added text to (a)6 "Complainant shall notify ... the Verified Complainant" and added (a)8.

Amended by R.1995 d.243, effective May 15, 1995.
See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Amended by R.2000 d.503, effective December 18, 2000.
See: 32 N.J.R. 3716(a), 32 N.J.R. 4452(a).

Rewrote (a)3.

13:4-3.6 Service of complaints

The Division shall serve a copy of the complaint upon each of the respondents by registered or certified mail, return receipt requested, or by any other means provided by Rule 4:4-4 governing the New Jersey courts.

Amended by R.1996 d.42, effective January 16, 1996.
See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

Case Notes

Although the regulations regarding service of complaints pursuant to the Administrative Code by the Division of Civil Rights does not specify the person to be served on behalf of a corporate respondent, any person may be served on behalf of the corporation who is so integrated with the papers and stands in a position as to render it fair, reasonable and just to imply authority to receive service. *Shannon v. Academy Lines, Inc.*, 346 A.2d 191.

SUBCHAPTER 4. PARTIES

13:4-4.1 Aggrieved persons

(a) Any individual, or group of individuals, partnership, educational institution, association, labor organization, corporation, legal representative, trustee, trustee in bankruptcy, receiver or fiduciary may file or through an attorney at law, file a verified complaint for any practice violative of the Law Against Discrimination which affects the complainant, the complainant's family or any person whom the complainant represents.

(b) The enumeration in (a) above of parties who may file a complaint includes, but is not limited to, groups and associations dedicated to the elimination of discrimination in the sale and rental of real property, in the hiring and promotional practices of employers and unions, and in the operation of public accommodations.

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2862(a), 18 N.J.R. 198(b).

Added text "verified" in (a).

Amended by R.1996 d.42, effective January 16, 1996.
See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

13:4-4.2 State officials who may file

(a) The Attorney General, the Director, the Commissioner of Labor, or the Commissioner of Education may also file a complaint alleging unlawful discrimination.

(b) The Director on his or her own behalf may file a complaint, intervene, or join as a complainant in any complaints filed by parties enumerated in N.J.A.C. 13:4-4.1 (Aggrieved persons) and by parties enumerated in this Section.

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2862(a), 18 N.J.R. 198(b).

Added text "intervene" in (b).

Case Notes

Discrimination action properly brought by Director, rather than aggrieved complainant, as provided by rule. *Director, Div. on Civil Rights v. Slumber, Inc.*, 166 N.J.Super. 95, 398 A.2d 1345 (App.Div. 1979), appeal dismissed in part 81 N.J. 334, 407 A.2d 1208, modified in part 82 N.J. 412, 413 A.2d 603 (1980).

13:4-4.3 Rights of parties; notification of settlement

(a) Any aggrieved person enumerated in N.J.A.C. 13:4-4.1 (Aggrieved persons) and N.J.A.C. 13:4-4.2 (State officials) who files a complaint shall be considered a party to any proceeding in the Division resulting from the filing of such complaint and shall have the rights of a party enumerated by these rules and by the Law Against Discrimination.

(b) If any complainant enumerated in N.J.A.C. 13:4-4.1 (Aggrieved persons) and N.J.A.C. 13:4-4.2 (State officials who may file) files a complaint with the Division, on behalf of any individual or individuals, the proceeding initiated by such complaint shall, if the Director finds the continuation of the proceeding is in the public interest, proceed to conclusion, including the issuance of any lawful order by the Director, even if the grievances of any individual person represented by the above aggrieved persons have been satisfactorily ameliorated.

(c) All complainants and individuals on whose behalf a complaint has been filed pursuant to (b) above and (d) below shall be notified of any settlement of individual grievances and of the right to file a motion urging the Director to continue the proceeding.

(d) Where the Director has filed a complaint which seeks relief for one or more unnamed members of a protected class, the Director shall have the discretion to settle such complaint on such terms as the Director deems appropriate.

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2862(a), 18 N.J.R. 198(b).

Added text "who files a complaint" in (a); and "on behalf of any individual or individuals," in (b). Deleted old text and substituted new in (d).

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

complainant's behalf. *Wood v. Garden State Paper Co., Inc.*, 577 F.Supp. 632 (D.N.J.1983).

Case Notes

Discrimination complainant's only right in course of representation by Division on Civil Rights is to be notified if Director settles case on

Attorney fees awarded to successful civil rights claimant when counsel's time records adequate to support award. *Lewis v. Jersey City Police Department*, 96 N.J.A.R.2d (CRT) 1.

SUBCHAPTER 5. PLEADINGS

13:4-5.1 Pleadings

(a) Pleadings before the Division on Civil Rights shall be complaints, answers, amendments to complaints and answers, motions and orders of the Director.

(b) Respondents shall serve an answer upon the Division within 20 days after service of the verified complaint upon them; such answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the allegations of the complaint.

(c) Respondents may not generally deny all the allegations, but shall make their denials as specific denials which meet the substance of designated allegations or paragraphs of the complaint.

(d) Allegations in any answer setting forth an affirmative defense shall be taken as denied.

R.1972, d.122, eff. June 26, 1972.
See: 4 N.J.R. 195(a).

Case Notes

Notice of appeal or cross-appeal is deemed complaint and tolls running of statute of limitations when aggrieved party in state administrative proceeding elects not to file complaint in state court alleging federal civil rights claims but raises such claims in notice of appeal or cross-appeal from the decision of the agency. *Maisonet v. New Jersey Dept. of Human Services, Div. of Family Development*, 140 N.J. 214, 657 A.2d 1209 (1995).

SUBCHAPTER 6. OTHER PLEADINGS

13:4-6.1 Findings of probable cause

(a) After the filing of the complaint, the Director shall cause an investigation to be made by an investigator of the Division as to the allegations of the complaint. The investigation may include a fact-finding conference pursuant to N.J.A.C. 13:4-2.3, document and information requests, and any other investigative methods authorized by N.J.S.A. 10:5-8(i).

(b) Following the completion of an investigation, the Director shall determine whether or not probable cause exists.

(c) Upon a finding of probable cause, such a finding shall be served upon the respondents and the complainants.

(d) If a finding of no probable cause is made, whether before or after investigation of a complainant's allegations, all complainants and respondents shall be notified of such a finding.

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2862(a), 18 N.J.R. 198(b).

Added text "The investigation may . . . by N.J.S.A. 10:5-8(i)."

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Amended by R.1996 d.42, effective January 16, 1996.

See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

In (b) inserted "Following the completion of the investigation,".

Case Notes

Finding that charges brought before the Division on Civil Rights were found to be without probable cause was admissible but was neither res judicata nor substantive evidence, nor did it collaterally estop petitioner pressing charges against board of education. *Perry v. Bd. of Educ., Glen Rock Boro.*, 1 N.J.A.R. 300 (1980).

13:4-6.2 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. 1:1-1.1, et seq.

(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.

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Substantially amended.

Amended by R.1996 d.42, effective January 16, 1996.

See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

Added (c).

13:4-6.3 Amended pleadings

(a) Prior to transmittal of a case to the Office of Administrative Law, the complainant with the approval of the Director may file an amended complaint with the Division.

(b) Following transmittal of a case to the Office of Administrative Law, any motion to amend a complaint shall be initially presented to the administrative law judge hearing the matter.

(c) Using the standards set forth in N.J.A.C. 1:1-6.3, any pleading may be amended during or after hearing with leave of the administrative law judge to conform to the evidence presented.

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Old text deleted and new substituted in (b).

13:4-6.4 Orders of Director

(a) The Director shall issue such orders as may be necessary to effectuate the processing and determination of a case

and may enter an order of dismissal at any time. Cases pending before the OAL shall be subject to the procedures set forth at N.J.A.C. 1:1-1.1, et seq.

(b) Such orders shall be served on all parties.

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added text "Cases pending before . . . N.J.A.C. 1:1-1.1, et seq."

13:4-6.5 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 complaint may file an original and two copies of 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.

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Substantially amended.

Amended by R.1996 d.42, effective January 16, 1996.

See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

In (a) and (c) inserted "of a case to the Office of Administrative Law,".

Case Notes

Former rule expressly required that motions to intervene be brought prior to public hearing; granting of motion to amend complaint to add individual complainers improper as it was in actuality a motion to intervene made out-of-time; monetary damages from Director's action to individuals for humiliation proper, although not individual complainers. Director, Div. on Civil Rights v. Slumber, Inc., 166 N.J. Super. 95, 398 A.2d 1345 (App.Div.1979) appeal dismissed in part 81 N.J. 334, 407 A.2d 1208, modified in part 82 N.J. 412, 413 A.2d 603 (1980).

SUBCHAPTER 7. SERVICE OF OTHER PLEADINGS

13:4-7.1 Method of service

(a) Prior to transmittal to OAL, unless otherwise instructed by the Director, every order and subsequent pleading to the original complaint, every motion and every written notice, brief or memorandum of law shall be served by mailing copies to all parties, by registered or certified mail, return receipt requested, 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.

(c) When any party has appeared through or is represented by an attorney, service upon such attorney shall be deemed valid service upon the party in all cases unless timely written notice of withdrawal or substitution of such attorney is served upon the Director and all other parties.

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

(c) added.

13:4-7.2 (Reserved)

SUBCHAPTER 8. INVESTIGATORY DEPOSITIONS AND INTERROGATORIES

13:4-8.1 Investigation by Division on Civil Rights

(a) The Director may cause interrogatories to be served whenever it shall be necessary to aid the Division in its investigation, either before or after a Finding of Probable Cause.

(b) The Director may issue such subpoenas as he or she deems necessary to aid the investigatory process.

As amended, R.1978 d.26, eff. January 24, 1978.

See: 10 N.J.R. 72(a).

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

"investigatory" substituted for "discovery".

Case Notes

Finding of employment discrimination against physically handicapped; burden of proof. Anderson v. Exxon Co., U.S.A., 89 N.J. 483, 446 A.2d 486 (1982).

13:4-8.2 Discovery of the Division files

(a) After a Finding of Probable Cause has been issued by the Director, after transmittal to OAL pursuant to N.J.S.A. 10:5-13, after any final determination has been issued, or after any other agency closure, a party may, upon written request and notice to all other parties, receive discovery of the following information in the Division's file:

1. Statements made by any person during the course of the Division's investigation, other than work product of Division employees, intra-agency communications and attorney-client communications.
2. All factual written reports of the field investigator.
3. All factual written data, factual written reports or documentary information.

(b) If it appears that a party's purpose in seeking discovery is to oppress any party or to delay the resolution of the case, the Director may refuse, terminate, or limit discovery as the circumstances warrant, including issuance of protective orders. When the case is pending before the OAL, any objections relating to discovery of the Division's files shall be made to the OAL with notice provided to the Director of the Division.

(c) The Division's fee for copying documents requested pursuant to this section shall be \$.25 per page. The Director may waive or modify this fee in the case of an indigent party or in other extraordinary situations for good cause. The Division's fee scale shall not apply to requests granted pursuant to N.J.S.A. 47:1A-2.

As amended, R.1978 d.26, eff. January 24, 1978.

See: 19 N.J.R. 72(a).

As amended, R.1978 d.82, eff. March 6, 1978.

See: 10 N.J.R. 171(a).

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Substantially amended and (c) added.

Case Notes

Finding of employment discrimination against physically handicapped; burden of proof. *Anderson v. Exxon Co., U.S.A.*, 89 N.J. 483, 446 A.2d 486 (1982).

Failure of respondents to utilize discovery to obtain background of discrimination complaint. *Director, Div. on Civil Rights v. Slumber, Inc.*, 166 N.J.Super. 95, 398 A.2d 1345 (App.Div.1979), appeal dismissed in part 81 N.J. 334, 407 A.2d 1208, modified in part 82 N.J. 412, 413 A.2d 603 (1980).

The consequences of an order withholding a respondent's opportunity to pursue discovery go only to the substantive course of the adjudication. *In re Vornado, Inc.*, 159 N.J.Super. 32, 386 A.2d 1342 (App.Div. 1978), certification denied 77 N.J. 489, 391 A.2d 503, 504 (1978).

Rule upheld as valid exercise of discretionary power by Director. *Howard Savings Institution v. Francis*, 133 N.J.Super. 54, 335 A.2d 80 (App.Div.1975).

Exception assertion that appellants' were denied meaningful discovery by Division held unfounded. *Hayman v. Funk*, 8 N.J.A.R. 27 (1984).

13:4-8.3 Interrogatory default procedure

(a) If a respondent has been served with a verified complaint and the Director has issued interrogatories pursuant to N.J.S.A. 10:5-8(i), and notice of the consequences of the failure to answer interrogatories has been given to respondent, and respondent fails either to answer the interrogatories or to file a motion to strike interrogatories within the time specified therein, the Director may:

1. Enter an order requiring the answering of said interrogatories and extending for an additional ten days the time within which answers to interrogatories are required and serve this order on respondent; and

2. Serve the following notice and order:

"NOTICE is hereby given that a complaint has been served upon you charging you with a violation of the Law Against Discrimination (N.J.S.A. 10:5-1 et seq.). Pursuant to this Division's authority under N.J.S.A. 10:5-8(i), interrogatories have been served upon you. Said interrogatories have not been answered and filed within the time as therein prescribed. Should you fail to fully answer and file the answers to interrogatories within ten days, a default shall be entered in this case. Said default shall constitute:

(a) An admission that the interrogatories, if answered, would have established facts in accordance with the claim of the complainant;

(b) A waiver of your right to have this Division conduct further investigation, find whether or not there is probable cause, make conciliation efforts or hold a public hearing. (N.J.S.A. 10:5-14, 10:5-15; N.J.A.C. 13:4-21, 13:4-6.1, 13:4-11.1, 13:4-12.1);

(c) A waiver of your right to present any and all defenses.

THEREFORE it is on this _____ day of _____, _____,

ORDERED:

1. Respondent(s) shall fully answer and file answers to interrogatories previously served.

2. Respondent(s) shall file said answers on or within the tenth day following the date of this order."

(b) In the event the respondent files a motion to strike interrogatories within the time set to answer interrogatories, said motion shall be supported by affidavit and/or brief and shall be ruled upon by the Director on the motion papers without oral argument; if said motion is granted the interrogatories shall be stricken and if said motion is denied the Director shall then follow the procedure set forth in (a) above or enter any other appropriate order.

(c) If after the expiration date of the Director's order extending time to answer interrogatories, the respondent has failed to fully answer and file the interrogatory with the Director:

1. Said failure shall result in the matters regarding which questions were asked being taken as established for the purposes of the case in accordance with the claim of the complainant; and

2. Said failure shall constitute a waiver of the respondent's right to an investigation, finding of probable cause, conciliation efforts or public hearing (N.J.S.A. 10:5-14, 10:5-15; N.J.A.C. 13:4-2.1, 13:4-6.1, 13:4-11.1, 13:4-12.1); and

3. Said failure shall result in the suppression of any and all defenses of the respondent; and

4. The Director shall order the entry of a default on the docket of the Division.

(d) Any order for entry of default must be supported by an affidavit of a field investigator or other Division employee authorized by the Director. The affidavit shall recite:

1. The date of service of the verified complaint and interrogatories on respondent and the date of the service of any order requiring answers to interrogatories and extending the time in which to answer them;

2. The date of service of the verified complaint and interrogatories as appears from the return of process;

3. That the respondent has failed to reply to the interrogatories within the time required by the Director's order as it may have been extended, or respondent has made a motion to strike interrogatories and following denial thereafter by the Director has failed to answer within the time required by the Director's order;

4. That respondent has been given notice of the consequences of failure to respond to interrogatories;

5. That the complainant had filed his allegation of discrimination within the time prescribed by law.

(e) Within ten 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 twenty days after receipt by respondent of the notice of entry of default. The notice shall also inform respondent of the opportunity provided by (g) below for petitioning the Director to vacate the entry of default.

(f) 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.

(g) At any time after entry of default and before transmittal 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 all interrogatories.

(h) If the Director vacates the entry of default at any time prior to the date of transmittal, then said transmittal shall be cancelled by the Director, and the complaint shall instead proceed to any investigation finding as to probable cause, conciliation or public hearing as provided by these rules.

(i) 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.

(j) After receiving the recommendation of the ALJ, the Director shall enter a final order pursuant to N.J.S.A. 10:5-17.

(k) 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.

(l) This order shall be the only final order provided for by this rule; all other orders provided by this rule shall be interlocutory in nature.

R.1972 d.121, eff. June 26, 1972.

See: 4 N.J.R. 194(a).

Amended by R.1975 d.346, effective November 18, 1975.

See: 7 N.J.R. 571(b).

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Substantially amended.

Case Notes

The consequences of an interrogatory-default order go only to the substantive course of the adjudication of the discrimination case; if the respondent has been prejudiced by a challengeable Director's order and denied leave to appeal therefrom, the challenge is preservable on appeal as of right from the Division's final determination. In re Vornado, Inc., 159 N.J.Super. 32, 386 A.2d 1342 (App.Div.1978), certification denied 77 N.J. 489, 391 A.2d 503, 504 (1978).

Interrogatory default procedure rule upheld as within Division's rulemaking power and as neither an usurpation of judicial functions nor contrary to the separation of powers doctrine; rule as related to practice or procedure validly promulgated without prior notice or hearing. General Motors Corp. v. Blair, 129 N.J.Super. 412, 324 A.2d 52 (App.Div.1974).

13:4-8.4 Depositions by Division and parties

(a) On written motion of any party or the Division, prior to transmittal of a case to OAL, the Director may order that the testimony of any material witness residing within or without the State be taken by deposition in the manner prescribed by law for depositions in civil actions. Such motion may be granted only if it sets forth:

1. The name and address of the witness to be deposed;

2. A showing of the materiality of that witness' testimony; and

3. A showing that the witness will be unable to attend, or cannot be compelled to attend, the hearing. Said motion shall request an order requiring the witness to appear and testify before an officer, representative, or agent of the Division.

(b) No depositions shall be taken for any reasons or by any manner other than that contained in (a) above, except in exceptional circumstances, prior to transmittal of a case to OAL.

R.1978 d.26, eff. January 24, 1978.

See: 10 N.J.R. 72(a).

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added text "prior to transmittal of a case to OAL" in (a) and "prior to transmittal of a case to OAL" in (b).

Case Notes

Held that State Supreme Court affirmation of finding, that employee charging discrimination was fired for cause, was not res judicata as employee did not have full and fair opportunity to present cause; Director has sole discretion to take depositions and to subpoena material or persons during an investigation of a complaint. *Wood v. Garden State Paper Co., Inc.*, 577 F.Supp. 632 (D.N.J.1983).

Finding of employment discrimination against physically handicapped; burden of proof. *Anderson v. Exxon Co., U.S.A.*, 89 N.J. 483, 446 A.2d 486 (1982) dissenting opinion.

SUBCHAPTER 9. SUBPOENAS

13:4-9.1 Issuance of investigatory subpoenas by Director

(a) The Director shall issue subpoenas in the name of the Division, and the subpoenas shall direct the person designated to attend personally and, if necessary, to attend with any books, records, documents and any other evidence which relates to any matter under investigation.

(b) A subpoena shall state the time and place where the person designated is directed to attend.

(c) The subpoena shall direct the person designated to answer to the subpoena at a time and place which shall be determined by the Director in his or her discretion.

(d) A subpoena may be issued by the Director upon the application of any party if that party can demonstrate to the Director that the subpoena is reasonable, and that the matters sought therein are relevant and material to the investigation.

(e) Where a respondent is a corporation and is represented by an attorney, the Director may issue a notice in lieu of subpoena requiring respondent to produce documents or to produce its employees to attend any investigatory proceeding. Said notice in lieu of subpoena shall be served upon respondent's attorney in the manner set forth in N.J.A.C. 13:4-9.2.

(f) Following transmittal of a case to OAL for hearing, the procedures set forth at N.J.A.C. 1:1-1.1, et seq., shall govern the issuance of subpoenas.

Amended by R.1985 d.697, effective January 21, 1986. See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

(e) added.

Amended by R.1991 d.67, effective February 19, 1991. See: 22 N.J.R. 3689(a), 23 N.J.R. 608(a).

Stylistic change only.

Case Notes

Held that State Supreme Court affirmation of finding, that employee charging discrimination was fired for cause, was not res judicata as employee did not have full and fair opportunity to present cause; Director has sole discretion to take depositions and to subpoena material or persons during an investigation of a complaint. *Wood v. Garden State Paper Co., Inc.*, 577 F.Supp. 632 (D.N.J.1983).

13:4-9.2 Service of subpoenas

(a) The subpoena shall be served either by personal service by any person 18 or more years of age by delivery of a copy thereof to the person named therein, or by registered or certified mail, return receipt requested.

(b) Accompanying all subpoenas shall be a check in an amount sufficient to cover the costs for one day's attendance and such mileage as may be allowed by law in civil matters in the courts of the State of New Jersey; but no fee shall be allowed where a subpoena requires only the production of documents which may be produced by mailing copies of said documents to the Division.

Amended by R.1985 d.697, effective January 21, 1986. See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added text to (b) "but no fee . . . to the Division."

13:4-9.3 Enforcement of depositions, interrogatories, subpoenas, other investigatory orders

(a) If any person shall fail to appear at the time designated in a subpoena, or shall fail to comply with an order of the Director for the taking of depositions, interrogatories, or other investigatory procedures, or shall fail to provide information as requested pursuant to a lawful investigation, he or she shall be subject to the appropriate enforcement provisions of N.J.S.A. 10:5-8i, 10:5-19 and 10:5-26, as well as the provisions of N.J.A.C. 13:4-8.3 (Interrogatory default procedure).

(b) If the subpoena or order has been issued at the instance of the Director or Division, the application to the court required by said Statute shall be in the name of the Division, and if it shall be at the instance of any party, he or she shall likewise apply to the Court to enforce the subpoena, as relator in the name of the Division.

R.1972 d.122, eff. June 26, 1972.

See: 4 N.J.R. 195(a).

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added text in (a) "or other investigatory procedures" and in (b) "to the court to enforce the subpoenas,".

Case Notes

Defendants' failure to seek leave to appeal from an interlocutory Director's decision did not foreclose raising of same issue defensively. *In re Vornado, Inc.*, 159 N.J.Super. 32, 386 A.2d 1342 (App.Div.1978), certification denied 77 N.J. 489, 391 A.2d 503, 504 (1978).

SUBCHAPTER 10. CONSOLIDATION

13:4-10.1 Consolidation or severance of complaints

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

thereto be consolidated with or severed from any other 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.

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

(b) added.
Amended by R.1995 d.243, effective May 15, 1995.
See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

SUBCHAPTER 11. CONCILIATION

13:4-11.1 Conciliation conference; notice; failure to attend

(a) After a finding of probable cause, the Director or his or her representative shall, to the extent feasible, schedule a conciliation conference and engage in conciliation with respect to the verified complaint, in accordance with N.J.S.A. 10:5-4.

(b) The respondent shall have at least five days notice of the time and place of the conciliation conference.

(c) This notice shall contain a provision advising the respondent that in the event conciliation is unsuccessful, a public hearing will be held.

(d) Any endeavors made pursuant to this rule at a conciliation conference shall be kept confidential by the Director and representatives of the Division.

(e) Failure to attend the conciliation conference may be deemed to be an unsuccessful attempt at conciliation.

(f) Any conciliation agreement arising out of conciliation efforts by the Division shall be an agreement between the respondent and the complainant, and shall be subject to the approval of the Division.

(g) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Division determines that disclosure is not required as otherwise provided by law and the Director in his or her discretion determines that disclosure is not appropriate.

New Rule, R.1972 d.122, effective June 26, 1972.
See: 4 N.J.R. 195(a).

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added "or her".

Amended by R.1995 d.243, effective May 15, 1995.
See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Case Notes

As board's hiring decision implicated inherent managerial prerogative, reverse discrimination claim could not be submitted to binding arbitration. *Teaneck Bd. of Educ. v. Teaneck Teachers Ass'n.*, 94 N.J. 9, 462 A.2d 137 (1983).

Notice of hearing provided 11 months after conciliation hearing required reversal of discrimination finding. *Hughes v. Cypress Garden Apartments, Inc.*, 118 N.J.Super. 374, 288 A.2d 31 (App.Div.1972).

SUBCHAPTER 12. HEARINGS

13:4-12.1 When hearings ordered

(a) The Director shall determine when a hearing shall be necessary in any matter.

(b) When conciliation has failed to eliminate the alleged practices of discrimination or when, in the judgment of the Director, conciliation would not be feasible, the Director shall order a hearing.

(c) At any time after 180 days from the filing of a Verified Complaint with the Division, a complainant may file a request with the Division to present the action by himself or through his own counsel to the Office of Administrative Law. Such request shall be in writing.

(d) Upon receipt of such request, the Director of the Division shall file the action with the Office of Administrative Law, unless at the time of receipt of the request the Division has found No Probable Cause or otherwise dismissed the complaint.

(e) The complainant or his or her attorney may be required to complete any forms which may be necessary to permit the Division to transmit the case to the Office of Administrative Law.

(f) When a complainant files a request with the Division pursuant to subsection (c) above, complainant thereby waives any right to have an attorney for the Division prosecute the complaint. The parties shall, however, send copies of all pleadings, briefs and memoranda to the Division's attorney at the same time as filing such papers with OAL. The Division's attorney may attend preliminary proceedings such as prehearing conferences in order to determine the appropriateness of intervention, and may intervene on behalf of the Division in any case pursuant to N.J.S.A. 10:5-13.

As amended, R.1983 d.347, eff. September 6, 1983.
See: 15 N.J.R. 501(a), 15 N.J.R. 1481(a).
Readopted, R.1983 d.650, eff. December 30, 1983.
See: 15 N.J.R. 1922(a), 16 N.J.R. 146(b).
Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added (f).
Amended by R.1995 d.243, effective May 15, 1995.
See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Case Notes

Normally, state defendant claiming that state administrative proceedings violate defendant's federal constitutional rights must have his federal rights adjudicated by state court system. *Ivy Club v. Edwards*, C.A.3 (N.J.)1991, 943 F.2d 270, rehearing denied, certiorari denied 112 S.Ct. 1282, 503 U.S. 914, 117 L.Ed.2d 507.

University social organization challenging constitutionality of state civil rights agency's exercise of jurisdiction over it would be allowed to return to federal court to litigate federal claims following completion of state court proceedings. *Ivy Club v. Edwards*, C.A.3 (N.J.)1991, 943 F.2d 270, rehearing denied, certiorari denied 112 S.Ct. 1282, 503 U.S. 914, 117 L.Ed.2d 507.

Law Against Discrimination did not jurisdictionally prevent plaintiff from filing complaint in superior court after withdrawing her administrative complaint. *Aldrich v. Manpower Temporary Services*, 277 N.J.Super. 500, 650 A.2d 4 (A.D.1994), certification denied 139 N.J. 442, 655 A.2d 445.

An administrative official designated by the head of the division on civil rights could not resolve disputed adjudicative facts without a trial-type hearing. *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Citation to former N.J.A.C. 13:4-12.2 requirement that hearing be held within 20 days of conciliation conference; hearing scheduling now at Director's discretion. *Director, Div. on Civil Rights v. Slumber, Inc.*, 166 N.J.Super. 95, 398 A.2d 1345 (App.Div.1979), appeal dismissed in part 81 N.J. 334, 407 A.2d 1208, modified in part 82 N.J. 412, 413 A.2d 603 (1980).

13:4-12.2 (Reserved)

13:4-12.3 Temporary injunction

If the Director determines that the interests of the complainant may be irreparably damaged by the lapse of time before a hearing could be scheduled or between the scheduling of a hearing and the ultimate disposition of the matter in the Division, he/she shall instruct the attorney for the Division to seek such temporary injunctive relief in the Superior Court of New Jersey, pursuant to N.J.S.A. 10:5-14.1, as may be appropriate to preserve the rights of the complainant. Where a complainant is proceeding pro se or through a private attorney, pursuant to N.J.S.A. 10:5-13, the complainant may apply to the Court for temporary injunctive relief.

Readopted, R.1983 d.650, eff. December 30, 1983.
See: 15 N.J.R. 1922(a), 16 N.J.R. 146(b).
Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added text "Where a complainant . . . temporary injunctive relief."

13:4-12.4 Conduct of hearings

The procedure for conducting hearings, issuing initial decisions and issuing final orders shall be governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Rule, R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).
Amended by R.1995 d.243, effective May 15, 1995.

See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Case Notes

All relevant evidence admissible in hearing before the Division under former N.J.A.C. 13:4-12.8. *Lige v. Town of Montclair*, 72 N.J. 5, 367 A.2d 833 (1976).

Notice of hearing provided 11 months after conciliation hearing held grounds for reversal of discrimination finding as scheduling delay beyond 20-day limit caused severe prejudice to respondent (former N.J.A.C. 13:4-12.2 cited as N.J.A.C. 13:4-32). *Hughes v. Cypress Garden Apartments, Inc.*, 118 N.J.Super. 374, 288 A.2d 31 (App.Div. 1972).

Black female park ranger proved hostile work environment arising from demeaning comments made by supervisor and repeated by co-workers. *Hodges v. Mercer County Park Commission*, 96 N.J.A.R.2d (CRT) 115.

Age discrimination complaint was properly dismissed where employer articulated nondiscriminatory reasons for reassignment of employee. *Foster v. Jersey Central Power & Light Company*, 96 N.J.A.R.2d (CRT) 101.

Refusal of taxi company to offer service to customer bound by wheelchair was unlawful discrimination. *Yetter v. Pino's Taxi*, 95 N.J.A.R.2d (CRT) 197.

Employee removed for poor work performance was not denied equal pay and promotional opportunities. *Uzoukwu v. Department of Higher Education*, 95 N.J.A.R.2d (CRT) 162.

Decision to discharge was made in good faith on basis of employee's absolute refusal to work and was not discriminatory on basis of national origin. *Moti v. Fritzsche Dodge*, 95 N.J.A.R.2d (CRT) 153.

Inquiry about race by landlord's daughter upon rental request was unlawful discrimination. *Pettiford v. Kouyoumdjian*, 95 N.J.A.R.2d (CRT) 148.

Failure to hire 64-year-old nonresident with hearing impairment was pretextual and discriminatory on basis of age and disability. *Bradley v. Highlands*, 95 N.J.A.R.2d (CRT) 136.

Discharge when employee not only failed to improve his performance, but refused to do any work at all was neither discriminatory nor retaliatory. *Wall v. Borgeson*, 95 N.J.A.R.2d (CRT) 121.

Work environment was so hostile as to amount to sexual harassment. *Bagarozza v. DeCozen Chrysler*, 95 N.J.A.R.2d (CRT) 109.

References to complainant in workplace as a practitioner of voodoo was discrimination in employment because of hostile work environment. *Prall v. Jamesway*, 95 N.J.A.R.2d (CRT) 93.

Assignment to diminished responsibilities was not due to race or handicap and was not in reprisal for complaining about treatment. *Reed v. Department of Treasury*, 95 N.J.A.R.2d (CRT) 81.

Back pay wage loss award was subject to all withholding amounts that would have been deducted. *Majofsky v. Mercer County*, 95 N.J.A.R.2d (CRT) 77.

Denial of application for mercantile license on basis of national origin was not established by inference or otherwise. *Mason v. Magnolia*, 95 N.J.A.R.2d (CRT) 72.

Nonretaliatory reasons for employment decisions were legitimate and precluded claim for discrimination in employment. *Monk v. Cardinal*, 95 N.J.A.R.2d (CRT) 59.

Refusal to rent to unmarried couple amounted to unlawful discrimination in housing on basis of marital status. *LaCoff and Kopelan v. De Biasse*, 95 N.J.A.R.2d (CRT) 51.

Downgrading from controller to analyst when younger employees remained in position was not age discrimination. *Harrison v. Educational Testing*, 95 N.J.A.R.2d (CRT) 35.

Prima facie claim of age discrimination by reason of elimination of position as part of reduction in force was not established. *O'Shea v. News Tribune*, 95 N.J.A.R.2d (CRT) 21.

Denial of Black applicant as a tenant when he refused to obtain permission from White neighbor was unlawful discrimination because of race. *Watson v. DiFrancesco*, 95 N.J.A.R.2d (CRT) 9.

No prima facie case; discriminatory retaliation, constructive discharge. *Griggs v. Titanium Industries*, 94 N.J.A.R.2d (CRT) 247.

Complainant failed to show that respondent's articulated reasons for its decision were pretexts for discrimination. *Bryer v. Liberty Mutual Insurance Co.*, 94 N.J.A.R.2d (CRT) 231.

Employee failed to establish that dismissal was racially motivated or that employer retaliated because of previous discrimination complaint. *Hill v. University of Medicine and Dentistry of New Jersey*, 94 N.J.A.R.2d (CRT) 221.

Employee demonstrated that she was terminated because she was pregnant. *LaSalle v. Merrill-Adams Associates*, 94 N.J.A.R.2d (CRT) 207.

Employee offered a prima facie case of sex discrimination, and when employer failed to offer a business-related reason for denying employee promotion. *Adams v. Housing Authority of the City of Camden*, 94 N.J.A.R.2d (CRT) 201.

Discrimination on the basis of race; newspaper's actions regarding promotions and assignments. *Parker v. The Time of Trenton*, 94 N.J.A.R.2d (CRT) 172.

Unlawful discrimination on the basis of race; racial slurs. *Lewis v. Jersey City Police Department*, 94 N.J.A.R.2d (CRT) 147.

Discharge of pregnant clerk; sex discrimination. *Opiated v. Colts Neck Inn*, 94 N.J.A.R.2d (CRT) 110.

Assignments given to female investigator; constructive discharge and discrimination. *Majofsky v. Mercer County Prosecutor's Office*, 94 N.J.A.R.2d (CRT) 77.

College was guilty of discrimination when extending job interviews. *Kimm v. Brookdale Community College*, 94 N.J.A.R.2d (CRT) 60.

Firing of pregnant bartender was unlawful discrimination. *Esher v. Brad's Red Tavern*, 94 N.J.A.R.2d (CRT) 45.

Prima facie case of reverse discrimination was successfully rebutted by school board's showing. *Hutchings v. Bridgeton Board of Education*, 94 N.J.A.R.2d (CRT) 19.

Decision to hire a caucasian female applicant as bookkeeper instead of black applicant; intent to discriminate. *Bolden v. Supreme Oil Company, Inc.*, 94 N.J.A.R.2d (CRT) 13.

Supervisor established a prima facie case of constructive discharge based on her age. *Levine v. Breeze Eastern Division of Transtechnology*, 94 N.J.A.R.2d (CRT) 1.

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. MOTIONS FOR RECONSIDERATION AND TO REOPEN PROCEEDINGS

13:4-14.1 Motions for reconsideration

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. 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. 13:4-7.1, following which each opposing party may, within five days following service of the motion, file a response to the motion. Such reconsideration shall not be a matter of right and shall only be for good cause shown.

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2862(a), 18 N.J.R. 198(b).

Added text "or her".

Repeal and New Rule, R.1996 d.42, effective January 16, 1996.

See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

Section was, "Reopened proceedings for cause".

Case Notes

Administrative agency may reopen a hearing prior to entry of an order. *Farley v. Ocean Tp. Bd. of Educ.*, 174 N.J.Super. 449, 416 A.2d 969 (App.Div.1980), certification denied 85 N.J. 140, 425 A.2d 294 (1980).

13:4-14.2 Motions to reopen the record

(a) Any party may, within 180 days of the service of a final order of the Director, file a motion to reopen the record in a proceeding. The motion shall be in writing and shall state the grounds upon which reopening is sought. The Director may grant such motion and vacate or modify the order, reopen the record or grant a hearing pursuant to N.J.A.C. 13:4-12.1, 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 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.

New Rule, R.1996 d.42, effective January 16, 1996.

See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

SUBCHAPTER 15. ORDERS OF DIRECTOR

13:4-15.1 Orders of Director

At any time during the course of the proceedings, the Director may enter such orders as he or she may deem appropriate to further the intent and purposes of the Law Against Discrimination, N.J.S.A. 10:5-1, et seq. When a case is within the jurisdiction of the OAL, the procedures set forth at N.J.A.C. 1:1-1.1, et seq., shall apply.

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Added text "Where a case is . . . shall apply."

13:4-15.2 Protection of witnesses; preventing reprisals

(a) No person shall discharge, evict, expel or otherwise discriminate or take reprisals against any person because he or she has opposed any practices or acts forbidden under the Law Against Discrimination or because he or she has filed a complaint, testified or assisted in any proceeding under the Law Against Discrimination.

(b) For the purposes of this section, all persons who have been, are or will be respondents in proceedings before said Division shall be considered to be within the continuing jurisdiction of the Division and shall be subject to appropriate order of the Director of the Division as in the case of an unlawful reprisal, including such interim orders as may be deemed necessary to preserve the status quo and to protect the best interests of the parties.

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2862(a), 18 N.J.R. 198(b).

Substituted "reprisal" for "discrimination" and "interim orders" for "preliminary relief".

Amended by R.1996 d.42, effective January 16, 1996.
See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

In (a) following "No person" deleted "who has been, is or will be a respondent in a proceeding before the Division on Civil Rights".

13:4-15.3 No probable cause as final order

A finding of no probable cause pursuant to N.J.A.C. 13:4-6.1, Findings of probable cause, shall be considered a final order.

Amended by R.1985 d.697, effective January 21, 1986.
See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Deleted "Section 6.1 of this Chapter".
Amended by R.1996 d.42, effective January 16, 1996.
See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

Rewrote section.

Case Notes

It was not violation of due process accord administrative determination, which had been affirmed by appellate division, full faith and credit. *Pittman v. La Fontaine*, D.N.J.1991, 756 F.Supp. 834.

Election to litigate her sexual harassment complaint through administrative procedure precluded employee from pursuing Title VII action in federal court. *Pittman v. La Fontaine*, D.N.J.1991, 756 F.Supp. 834.

Proceedings before state administrative agency prohibited employee from asserting related state law claims in federal ADEA suit. *Harter v. GAF Corp.*, D.N.J.1993, 150 F.R.D. 502.

Decision by New Jersey Division of Civil Rights is a final order. *Hernandez v. Region Nine Housing Corp.*, 146 N.J. 645, 684 A.2d 1385 (N.J. 1996).

Discharged employee's election to file national origin discrimination charge with the Equal Employment Opportunity Commission pursuant to federal law precluded employee from bringing state court national origin discrimination claim after the EEOC determined that employee failed to demonstrate probable cause for administrative determination of discrimination. *Hernandez v. Region Nine Housing Corp.*, 286 N.J.Super. 676, 670 A.2d 95 (A.D.1996).

Plaintiff barred from court trial of discrimination grievance after voluntary abandonment of appeal of Director's finding of no probable cause; no probable cause finding by Director is a final order appealable to the Appellate Division of the Superior Court. *Hermann v. Fairleigh Dickinson University*, 183 N.J.Super. 500, 444 A.2d 614 (App.Div.1982), certification denied 91 N.J. 573, 453 A.2d 884 (1982).

13:4-15.4 Validity of rules if any portion declared invalid

If any rule, sentence, paragraph or section of these rules, or the application thereof to any persons or circumstances, shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.