

**CHAPTER 45****ADMINISTRATIVE HEARINGS IN THE DIVISION  
OF CONSUMER AFFAIRS****Authority**

N.J.S.A. 34:8-54, 45:14D-6, 45:17A-21 and 56:8-4;  
and Reorganization Plan No. 008-1998.

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 45, Administrative Hearings in the Division of Consumer Affairs, expires on December 28, 2006. See: 38 N.J.R. 4400(a).

**Chapter Historical Note**

Chapter 45, Administrative Hearings in the Division of Consumer Affairs, was adopted as R.1971 d.196, effective November 1, 1971. See: 3 N.J.R. 261(b).

**SUBCHAPTER 1. GENERAL PROVISIONS**

- 13:45-1.1 Definitions
- 13:45-1.2 Scope
- 13:45-1.3 Construction
- 13:45-1.4 Practice where rules do not govern

**SUBCHAPTER 2. JURISDICTION**

- 13:45-2.1 Subject matter jurisdiction
- 13:45-2.2 Procedure where division is without jurisdiction

**SUBCHAPTER 3. COMMENCEMENT OF FORMAL  
ADMINISTRATIVE PROCEEDINGS**

- 13:45-3.1 Notice of hearing and complaint
- 13:45-3.2 Service of notice of hearing and complaint

**SUBCHAPTER 4. CONDUCT OF HEARINGS**

- 13:45-4.1 Hearing to conform to law
- 13:45-4.2 Hearing examiner
- 13:45-4.3 Time and place of hearing
- 13:45-4.4 Appearances and attorneys
- 13:45-4.5 Pleadings
- 13:45-4.6 Failure to appear
- 13:45-4.7 Transcript

**SUBCHAPTER 5. ISSUANCE OF FINAL DECISION**

- 13:45-5.1 Hearing examiner's decision
- 13:45-5.2 Assessment of civil penalties
- 13:45-5.3 Service of hearing examiner's decision
- 13:45-5.4 Payment of civil penalties
- 13:45-5.5 Reopening of proceedings
- 13:45-5.6 Validity of rules if any portion declared invalid

**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;

2. Where the respondent is a domestic or foreign corporation, by delivering a copy of the notice of hearing and complaint to either an officer, director, trustee or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, or the person at the registered

office or the principal place of business of the corporation in charge thereof. If service cannot be made upon any of the foregoing, then it may be made upon any agent, servant or employee of the corporation acting in the discharge of the duties of the corporation;

3. In the event that service upon either a domestic or foreign corporation cannot be effected in accordance with the above provisions, then the notice of hearing and complaint shall be served without the State on any officer, director, trustee or managing or general agent at the principal or registered place of business, or wherever such individual may be located. If such extraterritorial service cannot be effected on the stated persons, then the same shall be made upon any person authorized by appointment or by law to receive service of process on behalf of the corporation;

4. In lieu of the service set forth in paragraphs 1 through 3 of this subsection, the director may direct that service be made by sending a copy of the notice of hearing and complaint certified mail, return receipt requested to either the registered or principal place of business or to any agent authorized by law to accept service or to the last known address of the respondent.

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

#### SUBCHAPTER 4. CONDUCT OF HEARINGS

##### 13:45-4.1 Hearing to conform to law

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

##### 13:45-4.2 Hearing examiner

(a) All hearings shall be conducted before a hearing examiner designated by the Attorney General or the director.

(b) The hearing examiner shall have authority and discretion to control the order of proceedings, to administer oaths to witnesses, to rule on any procedural or evidential motions or objections, to order witnesses to produce evidence in accordance with the act and/or these rules, and to make such rulings as may be necessary to conduct a fair and orderly hearing.

(c) The hearing examiner shall receive all evidence relevant to the matter before him without regard to the strict rules of admissibility, and may in his discretion examine witnesses.

(d) The hearing examiner may permit the submission of written memoranda of law or briefs.

(e) The hearing examiner shall not dismiss any complaint or part thereof in any pending matter. A recommendation to dismiss the complaint or any part thereof may be made to the director in the hearing examiner's report or at such other time as may be appropriate for good cause shown.

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

##### 13:45-4.3 Time and place of hearing

(a) Hearings shall be held at a time and place designated by the director, having due regard for the convenience of the parties and witnesses.

(b) In the director's discretion or upon application made at least five days prior to the date of the hearing on behalf of any party, a hearing may be adjourned.

(c) A motion to adjourn a hearing may be made during a hearing to the hearing examiner.

(d) Upon granting any adjournment, the director or hearing examiner shall notify all interested parties and may on notice reschedule the hearing at any time thereafter.

(e) In the event an adjournment is granted as provided herein, either the director or the hearing examiner may, where appropriate, tax any costs or expenses, including but not limited to recording fees and hearing examiner's fees.

As amended, R.1973 d. 207, eff. July 27, 1973.

See: 5 N.J.R. 291(d).

As amended R.1977 d. 93, eff. March 17, 1977.

See: 9 N.J.R. 184(a).

##### 13:45-4.4 Appearances and attorneys

(a) The complainant in any hearing held hereunder shall first present the evidence in support of the alleged violation of the act.

(b) Thereafter, the respondent may cross-examine any witness giving testimony and present evidence either through counsel or pro se.

(c) A corporation shall not appear or file any paper in proceedings before the division except through an attorney authorized to practice in this State.

As amended, R.1977 d. 93, eff. March 17, 1977.

See: 9 N.J.R. 184(a).

##### 13:45-4.5 Pleadings

(a) A respondent may file an answer setting forth any factual or legal defenses to the allegations contained in the complaint.

(b) Where appropriate, the director may require the respondent to file an answer to the complaint.

(c) Filing of an answer shall be made by forwarding an original and two copies to the director.

(d) The failure to file an answer, except when ordered to do so, shall not be deemed a default.

(e) A complaint or an answer may be amended at any time prior to the hearing.

(f) Any pleading may be amended during or after a hearing with leave of the hearing examiner.

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

#### Case Notes

Complaint allegations deemed controverted in lieu of formal answer. *Levin v. Lewis*, 6 N.J.A.R. 85 (1980) affirmed 179 N.J.Super. 193, 431 A.2d 157.

#### 13:45-4.6 Failure to appear

If the respondent without good cause fails to appear on the date set for a hearing, the hearing officer may hear the evidence presented by the office and render his decision forthwith.

#### 13:45-4.7 Transcript

(a) The proceedings before the hearing examiner may be stenographically recorded at the request and expense of the respondent.

(b) If the proceedings are transcribed at the respondent's request, the respondent shall serve a copy of the transcript upon the hearing examiner and the attorney for the division.

(c) If the proceedings are transcribed at the division's request, respondent shall, upon written request, be afforded access to the transcript.

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

### SUBCHAPTER 5. ISSUANCE OF FINAL DECISION

#### 13:45-5.1 Hearing examiner's decision

(a) In any contested case, the respondent may, not later than ten days following the final day of hearing, submit proposed findings of fact and conclusions of law to the hearing examiner, provided notice of intention to submit such finding is given to the hearing examiner prior to the close of the hearing. In the event that a respondent elects to file proposed findings of fact and conclusions of law, a copy of the same shall be served upon the attorney for the division, who may within ten days after service thereof file a response thereto.

(b) The hearing examiner shall, not later than 30 days following the final day of hearing or receipt of the transcript or receipt of proposed findings of fact and conclusions of law, whichever is latest, file with the director a report pursuant hereto.

(c) The hearing examiner's report shall include recommended findings of fact and conclusions of law, separately stated.

(d) In those cases where an unlawful practice under the act is found, the report shall specifically state the violation in terms of the statutory language found to be violated.

(e) A concise and explicit statement of the underlying facts supporting a recommended finding of an unlawful practice shall be set forth.

(f) In any case where a respondent has submitted proposed findings of fact and conclusions of law, the report shall include a ruling on each proposed finding.

(g) In any case where a stenographic recording is not secured, the hearing examiner's report shall be in writing.

(h) In those cases where a stenographic recording is made of the proceeding, the hearing examiner may, in his discretion and consistent with the within rules and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., render a report orally on the record.

As amended, R.1973 d. 207, eff. July 27, 1973.  
See: 5 N.J.R. 291(d).  
As amended, R.1977 d. 93, eff. March 17, 1977.  
See: 9 N.J.R. 184(a).

#### 13:45-5.2 Assessment of civil penalties

(a) Upon recommending a finding of a violation of any provision of the act or any regulation promulgated thereunder, the hearing examiner may, in addition to any other remedy authorized by the act, recommend the assessment of a civil penalty in accordance with N.J.S.A. 56:8-13.

(b) For the purpose of applying said N.J.S.A. 56:8-13, a first offense shall be deemed to be the first consumer transaction in which an unlawful practice is established.

(c) A finding of an unlawful practice in a second consumer transaction shall be deemed to be a second offense within the meaning of N.J.S.A. 56:8-13.

(d) For the purpose of illustrating the within provision, if a respondent in any administrative proceeding held pursuant hereto is found to have used or employed an unlawful practice under the act in two separate consumer transactions, said respondent shall be liable for a penalty of not more than 2,000 for the first transaction and not more than \$5,000 for the second transaction.

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

**13:45-5.3 Service of hearing examiner's decision**

(a) A report rendered in writing by a hearing examiner shall be served upon the respondent by sending a copy of the report or transcript thereof by certified mail, return receipt requested, to the last known address of the respondent or where applicable, to counsel for respondent.

(b) Copies shall also be filed with the director and the attorney for the division.

(c) A respondent or the attorney for the division may, not later than ten days following receipt of the hearing examiner's report, file with the director written exceptions to the report. In the event such exceptions are filed, a copy thereof shall be served upon the hearing examiner and the opposing party or counsel thereto. Exceptions to the hearing examiner's report shall separately set forth the recommended finding of fact or conclusion of law to which the exception is taken and a concise statement of the applicable facts or law to be considered by the director in reviewing the report.

(d) Upon receipt of the hearing examiner's report and exceptions thereto, if any, the director shall review the record before the hearing examiner and render a final decision and order of the division. The division's final order may include such remedies or conditions as may be authorized by the act, including but not limited to the entry of a cease and desist order, restoration of moneys or property to consumers, and the assessment of civil penalties and costs.

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

**13:45-5.4 Payment of civil penalties**

(a) In any matter wherein payment of civil penalties is ordered, payment thereof shall be made not later than 10 days following service of the director's decision.

(b) Payment of assessed penalties shall be by certified check or money order made payable to the State of New Jersey by forwarding the same to the director.

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

**13:45-5.5 Reopening of proceedings**

(a) An administrative proceeding hereunder may be reopened:

1. By the hearing examiner at any time prior to rendering the report required herein; or
2. By the director at any time subsequent to the filing of the hearing examiner's report.

(b) A reopening may be sought by the respondent or the attorney for the division on a timely motion for good cause shown or on the motion of the hearing examiner or the director.

(c) The reopening of proceedings shall not be deemed to be a matter of right but rather a matter of discretion.

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

**13:45-5.6 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.