

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).

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. *Hutchngs 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.

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## SUBCHAPTER 13. (RESERVED)

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## 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).

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## 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.

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.