

LAW AND PUBLIC SAFETY

DIVISION ON CIVIL RIGHTS

Rules of Practice and Procedure

Proposed Readoption: N.J.A.C. 13:4

Authorized By: Craig Sashihara, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-8, 10:5-12, 10:5-18, and 34:11B-16.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2018-020.

Submit written comments by April 21, 2018, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 13:4 was scheduled to expire on January 28, 2018. As the New Jersey Division on Civil Rights (DCR) in the Department of Law and Public Safety filed this notice of readoption prior to the expiration date, that date is extended 180 days to July 27, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2). The DCR, pursuant to its rulemaking authority found at N.J.S.A. 10:5-8, proposes to readopt N.J.A.C. 13:4, concerning DCR's rules of practice and procedure without amendment.

DCR enforces both the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 et seq., and the New Jersey Family Leave Act (FLA), N.J.S.A. 34B:11B-1 et seq. As a method of enforcement, both statutes provide for DCR to accept and investigate complaints. The Legislature has required that DCR establish rules of practice to govern the agency's processes in enforcing the LAD. See N.J.S.A. 10:5-18. The procedures provided in these rules also apply to DCR's receipt and investigation of FLA complaints. See N.J.A.C. 13:14-1.16 and N.J.S.A. 34:11B-16.

In 2005, DCR conducted a comprehensive review of its rules of practice and procedure and determined that the rules in many respects were difficult to follow and did not fully reflect DCR's practices. For that reason, DCR repealed its rules of practice and procedure and adopted new rules. The new rules clarified and more fully and accurately explained DCR's procedures and practices. The 2005 adoption also included certain new procedural rules needed to ensure that DCR's rules are consistent with the Federal Fair Housing Act (FHA), 42 U.S.C. §§ 3601 et seq., and regulations promulgated under the FHA. Those regulations enabled DCR to achieve certification as a substantially equivalent agency by the U.S. Department of Housing and Urban Development (HUD) and to enter into a work-sharing agreement with HUD to receive Federal funding for case processing and other initiatives related to housing discrimination.

In 2011, DCR again reviewed the rules of practice and procedure. DCR determined that these rules were necessary, reasonable, and proper for the purpose for which they were originally promulgated, but proposed and adopted some stylistic, non-substantive changes to increase clarity, and some minor modification of practices to enable DCR to operate more efficiently and effectively.

DCR has now reviewed the current version of these rules and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Consequently, DCR proposes to readopt N.J.A.C. 13:4 without amendment.

The following is a summary of the existing rules in Chapter 4, which DCR proposes to readopt without amendment.

Subchapter 1 sets forth general provisions, including the scope, manner of construction, definitions of relevant terms, and entry of appearances by attorneys.

Subchapter 2 sets forth the rules pertaining to the commencement of actions.

Subchapter 3 sets forth the rules pertaining to the filing of answers.

Subchapter 4 sets forth the rules pertaining to the conduct of investigations.

Subchapter 5 sets forth the rules pertaining to defaults.

Subchapter 6 sets forth the rules pertaining to administrative dismissals.

Subchapter 7 sets forth the rules pertaining to motions.

Subchapter 8 sets forth the rules pertaining to the withdrawal of complaints.

Subchapter 9 sets forth the rules pertaining to conciliation and mediation.

Subchapter 10 sets forth rules pertaining to orders of the DCR Director.

Subchapter 11 sets forth rules pertaining to hearings.

Subchapter 12 sets forth rules pertaining to protection of complainants and witnesses.

Subchapter 13 sets forth rules pertaining to access to DCR's investigator's files.

Because the Director has determined that the comment period for this notice of proposal shall be 60 days, the notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Unlawful discrimination threatens the rights and privileges of all inhabitants of the State. The rules proposed for readoption provide important tools for the conduct of investigations and hearings of claims alleging discrimination in the workplace, in businesses and other places of public accommodation, and housing. The rules proposed for readoption will have a beneficial impact for all persons involved in cases filed with DCR, as they provide clearly defined and easy-to-follow procedures for complaint filing, presenting defenses, investigations, and hearings. The rules proposed for readoption contribute to the advancement of equal access and provide a beneficial impact on the residents of New Jersey. They also allow DCR to continue its work-sharing agreement with HUD, which permits New Jersey residents to pursue rights under both Federal and State housing discrimination law without separately filing a complaint with HUD. Such an arrangement also benefits entities charged with housing discrimination, as they are only subject to a single investigative proceeding.

Economic Impact

The rules proposed for readoption will not have a substantial economic impact on complainants or respondents, but merely set forth the procedures to be followed in DCR complaints, investigations, and hearings. The rules proposed for readoption will have a positive economic impact on DCR, as the rules permit DCR to maintain a work-sharing agreement with HUD, allowing DCR to receive Federal funding for case processing and other outreach initiatives. There would be no significant economic impact on businesses or the real estate industry since all legal obligations arising under the rules proposed for readoption have been mandated by existing Federal or State law and present no new legal obligations.

Federal Standards Statement

A Federal standards analysis is not necessary because the rules proposed for reoption do not exceed Federal standards. The rules proposed for reoption are intended to implement the LAD and the FLA, and are not intended to implement any program under Federal law. To the extent that any of the rules proposed for reoption are necessary to maintain substantial equivalency certification from HUD, the standards are similar to Federal standards set forth in the FHA.

Jobs Impact

The rules proposed for reoption will have no impact on the number of jobs in the State. The rules proposed for reoption will have no impact on the increase or decrease of staff positions in DCR.

Agriculture Industry Impact

The rules proposed for reoption will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The rules proposed for reoption do not directly impose any general reporting, recordkeeping, or other compliance requirements on any businesses. Rather, the rules describe how the Division conducts investigations and hearings of complaints filed with the agency. There are some small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that may be affected by the rules proposed for reoption to the extent that any of these small businesses are employers, housing providers, or owners of places of public accommodation that have complaints filed against them with the Division. In other cases, small

businesses could file complaints with the Division to the extent that a business has been the victim of unlawful discrimination. In either case, there are no reporting or recordkeeping requirements, but there may be compliance requirements related to being a party to a complaint before the Division that apply to all parties, including a small business.

For example, Subchapter 2 contains compliance requirements for filing a complaint, including time limits. Complaints must be filed within 180 days of the alleged act of discrimination. Subchapter 3 contains compliance requirements for filing an answer, which is to be filed within 20 days of service of a complaint. Subchapter 4 contains compliance requirements for responding to requests for documents or information by the Division during an investigation, as well as the requirement that a party attend a fact-finding conference when deemed necessary by the Division. Subchapter 5 contains compliance requirements when a party who has failed to respond to a Division request for documents or information wishes to avoid or vacate a default. Subchapter 7 contains compliance requirements related to filing, serving, and responding to motions before the Division, including time limits for various motions and necessary forms of service. Subchapter 9 contains compliance requirements related to conciliation and mediation, including the requirement that a party attend a conciliation or mediation session at the Division's offices when required by the Division. Subchapter 11 contains compliance requirements for requesting a hearing before an administrative law judge, including the requirement that a party complete any forms required to transmit a case to the Office of Administrative Law. Subchapter 13 contains compliance requirements for a party to obtain access to material in the Division's investigative file.

Because the compliance requirements of the rules proposed for readoption are not onerous, and would vary based on the nature of the investigation, it is not feasible for the

Division to propose separate requirements for small businesses to respond to Division requests for information or relevant materials. While some small businesses choose to retain an attorney during an investigation by the Division, neither an attorney nor any other outside professional services are required to comply with the rules proposed for readoption.

Housing Affordability Impact Analysis

DCR does not anticipate that the rules proposed for readoption will have any impact on the affordability of housing in New Jersey and they are extremely unlikely to evoke a change in the average costs associated with housing, because the rules proposed for readoption address the practices and procedures to be followed by DCR in receiving and investigating complaints under the LAD and FLA.

Smart Growth Development Impact Analysis

DCR does not anticipate that the rules proposed for readoption will have any impact on housing production in Planning Areas 1 or 2, or designated centers, under the State Development and Redevelopment Plan. The rules proposed for readoption address the practices and procedures to be followed by DCR in receiving and investigating complaints under the LAD and FLA.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:4.