

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION ON CIVIL RIGHTS

#### Rules of Practice and Procedure

**Proposed Amendments: N.J.A.C. 13:4-1.1, 1.3, 1.4, 1.6, 2 through 9, 10.1, 10.2, 11.1, 12, 13.1, and 13.2**

**Proposed New Rules: N.J.A.C. 13:4-1.7, 1.8, and 7.5**

**Proposed Repeal: N.J.A.C. 13:4-13.3**

Authorized By: Rachel Wainer Apter, 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 2020-079.

Submit written comments by October 16, 2020, to:

Aaron Scherzer, Chief of Strategic Initiatives  
Department of Law and Public Safety  
Division on Civil Rights  
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The agency proposal follows:

#### Summary

The New Jersey Division on Civil Rights as follows (“DCR” or “Division”), in the Department of Law and Public Safety, enforces the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 et seq., and the New Jersey Family Leave Act (NJFLA), 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 and NJFLA.

DCR proposes amending and adding to these rules to account for the use of a new online case filing and management system, named the New Jersey Civil Rights and Bias Incident System (NJCRBIS), which will be launched in the fall of 2020. The amendments and new rules would establish new practices and procedures for accepting, investigating, and managing complaints through NJCRBIS.

DCR’s proposed amendments and new rules would update the practices and procedures regarding filing complaints, answers, position statements, requests for extensions, motions, and serving subpoenas. The amendments and new rules would provide procedures for parties to investigations, and attorneys to file and receive documents, as well as

communicate with DCR staff, electronically. A new rule would set forth provisions regarding electronic registration with DCR and parties’ and attorneys’ consent to electronic service.

The provisions of the rules proposed to be amended and added by DCR are summarized below. It should be noted that, throughout the chapter, minor clarifying and/or technical amendments are proposed that do not change the meaning of the text. DCR proposes amendments throughout to make the language gender neutral by changing masculine and feminine pronouns, such as “his or her,” to “their.” Amendments that concern solely grammatical or simple verbiage changes are not specifically addressed in the summary below, but DCR intends for all such amendments to clarify wording in an effort to improve accuracy and efficiency. DCR proposes amendments throughout to adopt the court system’s method of calculating days, which includes only business days when calculating time periods of 10 days or fewer and includes calendar days when calculating time periods over 10 days. Accordingly, DCR proposes amendments to specify when the calculation of “days” includes only “business days” and when the calculation uses “calendar days.”

The following is a summary of the proposed amendments and new rules.

N.J.A.C. 13:4-1.4 sets forth definitions of relevant terms used in the rules. DCR proposes amending the definitions of “Administrative law judge,” “Director,” “investigator,” and “Office of the Division” and defining the terms “electronically” and “position statement.” DCR proposes amending the definition of “administrative law judge” to be consistent with the definition used by the Office of Administrative Law. As amended, the definition would include both permanent administrative law judges and administrative law judges appointed on a temporary basis or case basis during emergency or unusual situations and require that the judges be assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings. DCR proposes amending the term “Director” to make the definition gender neutral. DCR proposes amending the term “investigator” to include any person that the Director designates to perform investigative tasks, in addition to employees who are designated as investigators by the Civil Service Commission. DCR proposes amending the term “Office of the Division” to update the addresses of DCR’s offices. DCR proposes adding the definition of “electronically” in order to reference DCR’s new online case filing and management system, NJCRBIS. DCR also proposes adding the definition of “position statement” to provide clarity about the components of such statements and differentiate them from other documents submitted by respondents.

N.J.A.C. 13:4-1.6 sets forth the process for entry of appearances by attorneys. DCR proposes amending this section to allow attorneys for parties to file the Notice of Appearance form and Notice of Withdrawal electronically.

DCR proposes adding new N.J.A.C. 13:4-1.7 to set forth provisions regarding electronic registration with DCR and parties’ and attorneys’

consent to electronic service. Parties that use the electronic system to file documents will not need to serve hard copies of those documents on the opposing party either in person or by mail—if the opposing party is not registered to accept filings through the electronic system, DCR will send hard copies to them on the filing party’s behalf.

DCR proposes adding new N.J.A.C. 13:4-1.8 to clarify the method of calculating filing deadlines and to avoid deadlines falling on a non-business day. The proposed new rule comports with State court filing rules, thereby promoting consistency and predictability for both parties.

N.J.A.C. 13:4-2.1 sets forth the manner of commencing actions. DCR proposes amending this section to account for new practices and procedures for accepting complaints through NJCRBIS.

N.J.A.C. 13:4-2.3 sets forth the rights of parties and the requirement of notification of a settlement. DCR proposes amending subsection (e) to accurately reflect that current email addresses are necessary in order to file and receive documents and notices within NJCRBIS.

N.J.A.C. 13:4-2.4 sets forth the manner in which a verified complaint may be prepared and the contents of a verified complaint. DCR proposes amending subsection (b) to specify that a complainant must sign a verified complaint. DCR proposes amending paragraph (d)1 to remove the requirement that the complainant’s full home address be included on a verified complaint. A full home address is not required to fully inform the respondent of the allegations in the complaint.

N.J.A.C. 13:4-2.5 sets forth the time period for filing verified complaints. DCR proposes amending this rule to clarify the time period for filing verified complaints of a violation of the LAD or NJFLA by clarifying the means of calculating filing deadlines and avoiding deadlines falling on a non-business day. The rules for calculating deadlines comport with State court filing rules, thereby promoting consistency and predictability for both parties.

N.J.A.C. 13:4-2.6 sets forth the process for filing verified complaints. DCR proposes amending this rule to ensure that verified complaints may be filed electronically. The proposed amendment further clarifies that electronically filed verified complaints may be signed electronically and that the date of filing is the time of electronic submission if filed electronically or, if filed by mail or in person, the date of receipt at a DCR office.

N.J.A.C. 13:4-2.7 sets forth the process for notifying complainants of their rights. DCR proposes amending this section to provide for the electronic furnishing of a notification of rights to a complainant who is filing the complaint electronically.

N.J.A.C. 13:4-2.8 sets forth the process for serving verified complaints. DCR proposes amending this section to provide for the electronic service of verified complaints.

N.J.A.C. 13:4-2.9 sets forth the process of amending a verified complaint. DCR proposes amending this section by adding subsection (f) to clarify that DCR may amend any complaint to correctly identify the parties and clarify any claims and that the amendment will “relate back” to the date of the filing of the original complaint. This comports with DCR’s current practice and is consistent with the New Jersey Rules of Court.

N.J.A.C. 13:4-2.10 sets forth the manner of handling verified complaints involving minors or other confidential information. DCR proposes amending subsection (a) to no longer require use of the address of a DCR office instead of a home address for a complaint filed under a pseudonym, as no address will be required. The proposed amendment would make the provisions applicable to all aggrieved parties and witnesses.

N.J.A.C. 13:4-3.1 sets forth the time periods for filing answers and responses. DCR proposes amending this section to include time periods for filing position statements as well, and to account for the new procedures for submitting requests for extensions electronically. The proposed amendment would also clarify that respondents who fail to file the required documents within the provided time periods are subject to a demand by subpoena and/or an entry of default.

N.J.A.C. 13:4-3.2 sets forth the form and content of answers and position statements. DCR proposes amending this section by adding subsection (c) to reflect DCR’s current requirement that respondents submit position statements, and, where applicable, responses to document and information requests, in addition to answers to the verified complaint.

A position statement is required for an effective investigation because it is a narrative setting forth the respondent’s defenses to the allegations in the complaint. DCR also proposes amending subsection (d) to enumerate the types of changes in contact information about which respondents must notify DCR and clarify the time period during which a respondent must notify DCR.

N.J.A.C. 13:4-3.3 sets forth the process for serving answers and position statements. DCR proposes amending this section to allow the respondent to file and serve the answer and position statement electronically.

N.J.A.C. 13:4-4.1 sets forth the time periods and deadlines for investigations. DCR proposes amending subsection (c) to specify that DCR must complete its housing investigations within 100 days if they are dual-filed with the Federal Department of Housing and Urban Development (HUD) if it is not impracticable to do so. This comports with HUD rules.

N.J.A.C. 13:4-4.2 sets forth procedures pertaining to the conduct of investigations. DCR proposes amending subsection (a) to include a list of investigative techniques by way of example. DCR proposes amending subsection (d) to reflect that the list is solely a list of possible documents to be submitted, and is not intended to be exhaustive.

N.J.A.C. 13:4-4.4 sets forth provisions governing the issuance of subpoenas. DCR proposes amending this section to allow subpoenas to be served electronically to parties that have consented to electronic service.

N.J.A.C. 13:4-4.5 sets forth the process for taking depositions by the Division and parties. DCR proposes amending this section to clarify that depositions may be taken in the manner prescribed by the law for depositions in the New Jersey Court Rules.

N.J.A.C. 13:4-4.6 sets forth provisions pertaining to the enforcement of a request for deposition testimony, interrogatories, subpoenas, and other investigatory orders. DCR proposes amending the section heading, which only refers to enforcement of depositions, to more accurately describe the section. DCR also proposes changing the cross-reference from N.J.A.C. 13:4-5 to include Subchapter 6. This would provide for sanctions of any party that defaults on DCR’s requests because Subchapter 5 sets forth the enforcement provisions for respondents and Subchapter 6 sets forth the enforcement provisions for complainants.

N.J.A.C. 13:4-4.7 sets forth provisions pertaining to the convening and conducting of fact-finding conferences. DCR proposes amending subsection (a) to streamline the language by removing language that is duplicative and does not provide helpful information. DCR proposes amending recodified subsection (c) to replace “fact-finder” with “Division employee” because the Division employee conducting the fact-finding conference is not, pursuant to statute, the actual fact-finder. Rather, in a fact-finding conference, the role of the DCR employee is to examine parties and witnesses, gather evidence, and discuss settlement among the parties and representatives, if appropriate. DCR proposes amending recodified paragraph (d)1 to reflect the availability of electronic service.

N.J.A.C. 13:4-4.8 sets forth the Director’s ability to initiate and conduct investigations. DCR proposes amending subsection (a) to modernize and shorten the list of organization types to which the rule applies.

N.J.A.C. 13:4-5.1 sets forth provisions pertaining to entry of default. DCR proposes amending this section to simplify and clarify the process.

N.J.A.C. 13:4-5.2 sets forth the procedure for entry of default. DCR proposes amending subsection (a) to simplify and clarify the process. DCR proposes amending subsection (e) to add “In lieu of transmittal to OAL, the Director may elect to pursue an action in Superior Court pursuant to N.J.S.A. 10:5-13” to reflect the statutory amendment at N.J.S.A. 10:5-13 enacted by P.L. 2019, c. 436.

N.J.A.C. 13:4-5.3 sets forth the procedure for vacating a default. DCR proposes amending this section to limit the period of time during which respondents may seek vacation of default to 20 calendar days.

N.J.A.C. 13:4-5.4 sets forth provisions pertaining to a default hearing and final order. DCR proposes amending subsection (c) to clarify the Director’s ability to fully address violations of the law.

N.J.A.C. 13:4-6.1 sets forth the rules pertaining to administrative dismissals. DCR proposes amending subsection (a) to specify two more considerations relevant to the Director’s authority to administratively

dismiss a verified complaint. The list was never, and is not currently, exhaustive.

N.J.A.C. 13:4-7.1 sets forth the procedure governing motions. DCR proposes amending this section to reflect the availability of electronic service of motions.

N.J.A.C. 13:4-7.4 sets forth the procedure for motions for reconsideration. DCR proposes amending this section to reflect the availability of filing motions electronically.

Proposed new N.J.A.C. 13:4-7.5 sets forth the procedure for motions to dismiss a complaint. The proposed language sets forth DCR's current practice for handling motions to dismiss a complaint.

Recodified N.J.A.C. 13:4-7.6 is proposed for amendment to allow either party to file motions electronically and to simplify the section.

N.J.A.C. 13:4-8.1 sets forth the rules pertaining to the withdrawal of complaints. DCR proposes amending subsection (b) to allow complainants to file a motion to withdraw electronically.

N.J.A.C. 13:4-9.1 sets forth the rules pertaining to the timing of conciliation proceedings. DCR proposes new subsection (b) to reflect how the Director currently manages occasions when the respondent is unwilling to participate in, or is absent from, conciliation proceedings.

N.J.A.C. 13:4-9.4 sets forth the procedure for conciliation conference proceedings. DCR proposes amending subsection (a) to comport with the current process at DCR of scheduling a conciliation conference.

N.J.A.C. 13:4-10.2 sets forth the rules pertaining to findings of probable cause. DCR proposes new subsection (f) to comport with current practice in which the Director may use a pseudonym in place of the name of the complainant or a witness if the complainant or witness is a minor, or where disclosure of the name of complainant or the witness would involve disclosure of confidential or private information or is otherwise deemed appropriate, within the Director's discretion.

N.J.A.C. 13:4-12.1 sets forth the rules pertaining to protection of complainants and witnesses. DCR proposes amending subsection (b) to reflect that the Director has discretion to exercise his or her authority to act on behalf of the public interest, in addition to the interests of the parties. This reflects the Director's statutory duties.

N.J.A.C. 13:4-13.1 sets forth the rules pertaining to the confidentiality of DCR's investigatory files. DCR proposes amending this section to make clear that DCR's investigatory files are not subject to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., other than any final agency disposition or any finding of probable cause.

N.J.A.C. 13:4-13.2 sets forth the rules pertaining to access to DCR's investigatory files by parties to a verified complaint. DCR proposes amending this section by replacing "discovery" with "access" to avoid confusion between what records are available under OPRA and what records are available to the parties. DCR proposes amending subsection (a) to reflect current restrictions on access to confidential or privileged work product within DCR's investigatory files. The facts contained in written reports or sound recordings, made by the field investigator or other employee or agent of the Division memorializing any witness or party interview, fact-finding conference, or site visit, continue to be accessible to the parties. DCR proposes new subsection (b) to specify that parties cannot be provided with records pertaining to settlement discussions and any privileged material in DCR investigatory files. DCR proposes amending recodified subsection (c) to clarify that the Director may refuse, terminate, or limit access to material in a DCR investigatory file if the request for the material seeks confidential or privileged material or the request is made to oppress a party or delay the resolution of a case. DCR proposes new subsection (d) to make clear that the Division may continue its current practice of showing a party or witness a document from an investigatory file during the pendency of an investigation when the Division deems it necessary to complete the investigation.

N.J.A.C. 13:4-13.3 is proposed for repeal to eliminate redundancies in the subchapter created by DCR's proposed amendments to N.J.A.C. 13:4-13.1. Provisions permitting non-parties to access any final disposition or finding of probable cause will be codified at N.J.A.C. 13:4-13.1. The Division proposes removing provisions permitting non-parties to access complaints and answers in the investigative file. DCR maintains a work-sharing agreement with the U.S. Equal Employment Opportunity Commission (EEOC) and many charges are dual-filed with DCR and EEOC. The proposed repeal will make this chapter consistent with Federal

practice, where the EEOC is prohibited from making charges filed with the agency available to the public.

As the Division is providing a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

Unlawful discrimination and harassment threaten the rights and privileges of all New Jersey residents. The amendments, repeal, and new rules DCR propose provide additional tools for the conduct of investigations and initial determinations of claims alleging discrimination in the workplace, housing, and places of public accommodation. The amendments, repeal, and new rules 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 engaging in the complaint, investigation, and initial determinations process electronically. The new computer system will allow parties to investigations and attorneys to file and receive documents, as well as communicate with DCR staff, electronically. Filing documents electronically will streamline the intake and investigation process by reducing mailing and administrative processing time. It will reduce the administrative burden on the regulated community and residents in general. The new system will also allow parties and attorneys to easily communicate with DCR investigators and others working on their cases. This will dramatically reduce barriers to filing for individuals who have been subjected to violations of the LAD and the NJFLA. It will reduce the burden for employers, housing providers, owners and employees of places of public accommodation, and others who are alleged to have violated the LAD and the NJFLA. These additional ways to engage with DCR will improve access to justice for complainants and respondents. As always, complainants and respondents will continue to be able to communicate with DCR either in person or by mail. The proposed amendments, repeal, and new rules, thus, contribute to the advancement of equal access and provide a beneficial impact on the residents of New Jersey. The online case filing and management system will also allow DCR to manage all of its investigations online, which will increase DCR's productivity.

#### **Economic Impact**

The Division does not anticipate that the proposed amendments, repeal, and new rules will have any economic impact on complainants or respondents. They merely set forth the procedures that can be followed in DCR complaints, investigations, and hearings, if a party chooses to use DCR's new online case filing and management system.

However, the amendments, repeal, and new rules may have a positive fiscal impact on members of the public who file complaints with DCR and on individuals and entities responding to complaints. The costs for complainants and respondents to file and respond to complaints will be reduced because the parties will no longer be required to travel to a physical Division on Civil Rights office to file or answer complaints. This will be particularly beneficial to individuals who would otherwise have to rely on public transportation to travel to a Division on Civil Rights office and to those who cannot easily take the time out of their workday to travel.

Additionally, a party that elects to use the computer system may serve the other party electronically in lieu of serving a physical copy on the other party. This will reduce the cost of service, saving fiscal resources.

#### **Federal Standards Statement**

The proposed amendments, repeal, and new rules do not impose standards beyond those required by Federal law. DCR maintains a work-sharing agreement with the U.S. Equal Employment Opportunity Commission (EEOC) and many charges are dual-filed with DCR and EEOC. The Division's rulemaking to remove provisions permitting non-parties to access complaints and answers in the investigative file makes this chapter consistent with Federal practice, where the EEOC is prohibited from making charges filed with the agency available to the public.

#### **Jobs Impact**

The Division does not anticipate that the proposed amendments, repeal, and new rules will have any impact on the number of jobs in the State. The proposed amendments, repeal, and new rules will have no impact on the increase or decrease of staff positions in DCR.

**Agriculture Industry Impact**

The Division does not anticipate that the proposed amendments, repeal, and new rules will have any impact on the agriculture industry of this State.

**Regulatory Flexibility Statement**

The Division does not anticipate that the proposed amendments, repeal, and new rules will impose any reporting, recordkeeping, or compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments, repeal, and new rules do not impose any reporting, recordkeeping, or other compliance requirements.

**Housing Affordability Impact Analysis**

The Division does not anticipate that the proposed amendments, repeal, and new rules will have any impact on the affordability of housing in New Jersey or would change the average costs associated with housing, because the proposed amendments, repeal, and new rules address the practices and procedures to be followed by DCR in receiving and investigating complaints under the LAD and NJFLA.

**Smart Growth Development Impact Analysis**

The Division does not anticipate that the proposed amendments, repeal, and new rules will have any impact on smart growth, or would change housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments, repeal, and new rules regard DCR practices and procedures to be followed by DCR in receiving and investigating complaints under the LAD and NJFLA.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Division has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State because the proposed rule amendments regard DCR practices and procedures. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

## 13:4-1.1 Scope of rules

The following provisions shall constitute the practice and procedure of, 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, shall govern proceedings in that case. Whenever [these rules] **this chapter** refers 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.

## 13:4-1.3 Practice where rules do not govern

(a) The Director may rescind, amend, or expand [these rules] **this chapter** from time to time, as necessary, to comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or the Family Leave Act, N.J.S.A. 34:11B-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] **this chapter**, the Director shall exercise [his or her] **their** discretion.

## 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)]**4 or 52:14F-5(m) and assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings.**

... “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] **their** place and with [his or her] **their** powers.

... “**Electronically**” means through the New Jersey Civil Rights and Bias Incident System (NJCRBIS), available at [www.njcivilrights.gov](http://www.njcivilrights.gov), or through another electronic means specified by the Director.

“Investigator” means any employee of the Division designated [under the Department of Personnel] **by the Civil Service Commission as “Investigator, Division on Civil Rights” or any person designated by the Director to perform investigative tasks.**

... “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,] **1325 Boardwalk, Atlantic City, New Jersey; [574 Newark Avenue, Jersey City,] 5 Executive Campus, Cherry Hill, New Jersey;** and any additional offices that may from time to time be established and listed on the Division’s website, [www.njcivilrights.gov](http://www.njcivilrights.gov).

“**Position statement**” means a legal brief or other writing that, in narrative fashion, responds to the allegations in a verified complaint, as well as explains the respondent’s version of the facts and identifies specific documents and witnesses supporting its position.

...

13:4-1.6 Attorneys; form of appearance on behalf of parties

(a) An attorney may appear on behalf of a party by completing a Division Notice of Appearance form **electronically** or by providing all of the information requested on such form in a letter or similar document. The Notice of Appearance form is available from the Division’s offices or its website, [www.njcivilrights.gov](http://www.njcivilrights.gov). To constitute an appearance, a form, letter, or document shall contain the names of the parties, the Division’s docket number, the name of the party or parties that the attorney is representing and the attorney’s address, telephone number, facsimile number, and email address. [Any]

**(b) If the attorney has consented to electronic service and filed the Notice of Appearance form electronically, nothing further shall be required of the attorney. If the attorney has not consented to electronic service or has not completed the Notice of Appearance form electronically, any document constituting an appearance shall be personally signed by the attorney filing the appearance and the attorney shall serve a physical copy of the document on the other party pursuant to the procedure set forth at N.J.A.C. 13:4-7.6 within three calendar days of filing.**

[ (b) (c) If a party appears through an attorney, all [papers] **documents** subsequent to the verified complaint may be served, as provided [herein] **in this chapter**, upon such attorney with the same force and effect as though served on the client, unless a specific [regulation] **rule** requires service on the client also.

[ (c) (d) An attorney who seeks to withdraw [his or her] **their** appearance shall submit a [written] Notice of Withdrawal of Appearance form to the Division [or provide all of the information requested on such form in a letter or similar document] **electronically, by mail, or in person.** Copies of this form are available from the Division’s offices or its website. [Upon the filing of this]

[ (d) (e) **If the attorney has submitted the Notice of Withdrawal electronically, nothing else shall be required of the attorney. If the attorney has not submitted the Notice of Withdrawal form electronically, upon filing of the hard copy** Notice of Withdrawal of Appearance form, the attorney shall concurrently serve copies of the Notice of Withdrawal of Appearance form upon the client and other parties. The attorney shall include a certification that a copy of the notice was mailed or delivered to all counsel and pro se parties and to the client. When an attorney seeks to withdraw after a verified complaint has been transmitted to the Office of Administrative Law, the request for withdrawal shall be addressed to the [Administrative Law Judge under] **administrative law judge pursuant to** the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**13:4-1.7 Electronic registration with the Division and consent to electronic service**

**(a) Any employer, housing provider, or place of public accommodation may register with the Division electronically and**

identify an individual to electronically accept service in connection with any complaint filed with the Division by providing the name, email address, and phone number for the individual authorized to accept service. When the Division receives a complaint against a respondent that has not so registered, the Division will attempt to find the information above, including by contacting the respondent, and will ask the respondent to register with the Division electronically. For any respondent registered with the Division electronically, the Division shall serve any verified complaint and all other filings electronically, and the respondent may respond to the complaint and other inquiries by the Division electronically.

(b) Any complainant may register with the Division electronically by providing their name, email address, and phone number. For any complainant registered with the Division electronically, the Division shall serve all filings electronically.

(c) When a complainant or respondent has registered with the Division electronically and submits any document to the Division electronically, it need not serve a physical copy of the document on the other party pursuant to the procedure set forth at N.J.A.C. 13:4-7.6.

#### 13:4-1.8 Computation of time

Unless otherwise provided in a specific rule, in computing any period of time fixed by this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or State or Federal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor State or Federal holiday. In computing a period of time of less than seven days, Saturday, Sunday, and State or Federal holidays shall be excluded.

### SUBCHAPTER 2. COMMENCEMENT OF ACTIONS

#### 13:4-2.1 Manner of commencing actions

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

#### 13:4-2.2 Who may file a verified complaint

(a)-(d) (No change.)

(e) The Director on [his or her] **their** own behalf may file a verified complaint[,] **or may** intervene[,] or join as a complainant in any verified complaint[s] filed by complainant[s] **pending before the Division**.

#### 13:4-2.3 Rights of parties; notification of settlement

(a) (No change.)

(b) The proceeding initiated by any verified 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 **complainant** or individual person represented by the above complainants have been satisfactorily ameliorated.

(c)-(d) (No change.)

(e) Complainants **and respondents** shall **electronically, or by other means, provide the Division with their address, telephone number, and email address in connection with the filing of any complaint, and promptly** notify the Division of any change in address, [or] telephone number, **or email address** at all times [while the verified complaint is pending] **until the time for an appeal of a final order has expired**.

#### 13:4-2.4 Preparation and contents of verified complaint

(a) (No change.)

(b) The Division shall aid the complainant in the completion of the verified 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] **complainant submits** a completed **and signed** verified complaint. The Division reserves the right to modify any verified complaint completed by the complainant to meet the Division's jurisdictional and formatting requirements.

(c) (No change.)

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

1. The full name [and address] of all complainants;

2.-4. (No change.)

5. A statement giving all pertinent facts as to whether any other action, either criminal or civil, has been instituted in the matter. A complainant shall notify the Division if at any time during the pendency of the verified complaint, [he or she] **they** file[s] a complaint with any other agency or court concerning the matter [which] **that** is the subject of the verified complaint;

6. A verification by the person or persons filing the verified complaint **that the information provided is true and accurate;** and

7. (No change.)

#### 13:4-2.5 Time period for filing verified complaints

Verified complaints shall be filed within 180 **calendar** days after the alleged act of discrimination or alleged violation of the Family Leave Act.

#### 13:4-2.6 How to file verified complaints

(a) Any person filing a verified complaint with the Division may file by submitting a [single copy to] **signed verified complaint to the Division electronically, by regular mail, or in person** at any office of the Division [or any official or field investigator of the Division]. A verified 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] **by** the Division. **Any complaint that is submitted electronically may be signed electronically as well.**

(b) The filing of a verified complaint or any other pleading shall be proven by the **time it was submitted electronically, or, for filings submitted by regular mail or in person, the official stamp** of the Division or by the signature of any official, employee, or [field] investigator and [his or her] **their** written notation indicating the date of receipt.

#### 13:4-2.7 Notification of filing

Upon, **or before**, receipt of [the] a verified complaint, the Division shall provide the complainant with [a form adopted by the Director, which] **written information that** notifies the complainant of [his or her] **their** rights under the Law Against Discrimination or Family Leave Act, including the right to file a verified 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 or Family Leave Act that may apply to the verified 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 or Family Leave Act, and the inability of the Division on Civil Rights to afford parties the opportunity of a jury trial in claims heard before the Office of Administrative Law. **If the complainant is registered with the Division electronically, such notice may be provided electronically.**

#### 13:4-2.8 Service of verified complaints

(a) Upon receipt of a verified complaint, the Division shall promptly serve a copy on all respondents **electronically**, by certified mail or overnight delivery by commercial courier, or at the discretion of the Director, by personal delivery by an agent of the Division. In cases involving alleged violations of N.J.S.A. 10:5-[12g]**12.g**, h, i, k, and o, service of the verified complaint shall take place no later than 30 **calendar** days following the Division's receipt of the verified complaint.

(b) (No change.)

#### 13:4-2.9 Amendment of verified complaints

(a)-(e) (No change.)

**(f) At any time prior to the transmittal of a matter to the Office of Administrative Law, the Director may on their own initiative amend any complaint to correctly identify the parties and/or clarify any claims made in the complaint to conform to the evidence. Any such amendment shall relate back to the date of the filing of the original complaint.**

#### 13:4-2.10 Verified complaints involving minors or other confidential information; use of pseudonym

(a) The Division shall take two verified complaints with the same docket number when the verified complaint involves a minor or when the

Director determines, in [his or her] **their** sole discretion, that the verified complaint involves confidential information regarding [an aggrieved] a party **or witness**. The first verified complaint shall include the full name [and address] of the aggrieved party and the full name of any other minor identified in the complaint and shall not be disclosed, except as required by law. The second verified complaint shall be identical to the first, except that a pseudonym shall be substituted for the name of the aggrieved party and/or any other identified minor [and the address, if any, shall be that of the Division's office investigating the verified complaint or the address of an attorney or other representative designated by the complainant or aggrieved], party, **or witness**.

(b) (No change.)

### SUBCHAPTER 3. ANSWERS

#### 13:4-3.1 Time for filing answers **and position statements**

(a) Respondents shall file an answer, **position statement**, and response to [the] **any** Document and Information request with the Division within 20 **calendar** days after service of the verified complaint and **any** Document and Information Request.

(b) Respondents that fail to file an answer, **position statement**, and/or response to the Document and Information Request within the time period provided by [these rules shall be] **this chapter are** subject to a **demand by subpoena, and/or entry of default in accordance with** the [default] procedure set forth at N.J.A.C. 13:4-5.

(c) Extensions of time for filing an answer, **position statement**, and/or responding to the Document and Information Request may be authorized by the Director upon good cause shown. Requests for extensions of time shall be [in writing and addressed to the Director] **submitted electronically or by mail**.

#### 13:4-3.2 Form and content of answers **and position statements**

(a) The answer to the verified complaint shall fully and completely advise the parties and the Division as to the nature of the respondent's defenses to each claim asserted, and shall admit or deny [the] **each** allegation[s] set forth in the verified complaint. Denials shall fairly meet the substance of the allegations denied. A respondent who intends, in good faith, to deny only part or a qualification of an allegation shall specify so much of it as true and material and deny only the remainder. The respondent may not generally deny all the allegations but shall make the denials as specific denials of designated allegations.

(b) (No change.)

(c) **In addition to an answer to the verified complaint, respondents shall provide a position statement that explains, in narrative form, why the respondent believes that no violation of the Law Against Discrimination or Family Leave Act occurred, and a copy of each document and any other physical or electronic evidence necessary to support the facts, allegations, and defenses set forth in the position statement and answer.**

[(c)] (d) Respondents shall promptly notify the Division of any change in **contact information, including mailing address, email address, phone number, and contact person**, or other material change in the status of the respondent (such as bankruptcy filing or ceasing to operate as an ongoing concern) at all times [while the verified complaint is pending] **until the time for an appeal of a final order has expired**.

#### 13:4-3.3 Service of answers **and position statement**

(a) [Respondents shall] **If the respondent has consented to electronic service and filed the answer, position statement, and response to any Document and Information request with the Division electronically, the respondent shall not be required to serve a physical copy on the complainant. If the respondent has not consented to electronic service or has filed the answer, position statement, and response to any Document and Information request with the Division by mail, the respondent shall serve a physical copy of their answer[s] and position statement on the complainant(s) pursuant to the procedure set forth at N.J.A.C. 13:4-[7.5]7.6 within three calendar days of the filing of the answer.**

(b) [Respondents] **If service on the complainant is required pursuant to (a) above, respondents shall, within five business days of**

servicing an answer, file a certification with the Division attesting that such service has been completed.

### SUBCHAPTER 4. INVESTIGATIONS

#### 13:4-4.1 Timing of investigations

(a)-(b) (No change.)

(c) In cases **dual-filed with the Federal Department of Housing and Urban Development (HUD)** involving alleged violations of N.J.S.A. 10:5-[12g]12.g, h, i, k, and o, **unless it is impracticable to do so**, the Division shall complete its investigation within 100 **calendar** days after its filing of the verified complaint. If the Division is unable to complete the investigation within that time period, it must notify the complainant(s) and respondent(s) in writing of the reasons for [its failure to do so] **the delay**.

#### 13:4-4.2 Investigatory procedures

(a) In the conduct of investigations, all investigatory powers granted by N.J.S.A. 10:5-[8h]8.h through j shall be available to the Division. In its discretion, the Division may conduct investigations using[, among other things,] **any investigatory tool deemed appropriate, including, but not limited to**, interrogatories, fact finding conferences, subpoenas, field visits, interviews, and depositions [as provided in these rules].

(b)-(c) (No change.)

(d) In connection with an investigation of any employer, as defined by N.J.S.A. 10:5-[5e]5.e, the Division may require the submission of **any information or documents deemed appropriate, including, but not limited to**, information concerning:

1.-6. (No change.)

#### 13:4-4.3 Interrogatories

The Director may cause interrogatories to be served to aid the Division in its investigation. Unless otherwise specified in the interrogatories, responses shall be filed with the Division within 20 **calendar** days following service of the interrogatories.

#### 13:4-4.4 Subpoenas

(a) The Director may issue such subpoenas as [he or she] **they** deem[s] necessary to aid the investigatory process. 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, **electronic records**, and any other evidence [which] **that** relates to any matter under investigation.

(b)-(c) (No change.)

(d) Where a respondent is represented by an attorney who has filed a notice of appearance [with the Division], the Director may issue a notice in lieu of subpoena requiring **the** respondent to produce documents or to produce its employees to attend any investigatory proceeding. Said notice in lieu of subpoena shall be served upon **the** respondent's attorney in the manner set forth [in] **at** (f) below.

(e) (No change.)

(f) The subpoena shall be served either **electronically when the respondent or party to be served has consented to electronic service**, or by personal service by any person 18 or more years of age by delivery of a copy [thereof to the person named therein] **of the subpoena to the person named in the subpoena**, by overnight delivery by commercial courier, or by registered or certified mail, return receipt requested.

#### 13:4-4.5 Depositions by Division and parties

(a) On written motion of any party prior to transmittal of a case to **the** 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] **the New Jersey Court Rules**. Such motion may be granted only if it sets forth:

1.-3. (No change.)

(b) In [his or her] **their** discretion, the Director may allow the taking of a deposition to be contingent upon the payment of all costs associated therewith by the moving party.

(c)-(d) (No change.)

13:4-4.6 Enforcement of [depositions,] **a request for deposition testimony**, interrogatories, subpoenas, other investigatory orders

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] **they** shall be subject to the appropriate enforcement provisions of N.J.S.A. 10:5-8i)8.i, 10:5-19, and 10:5-26, as well as the provisions of N.J.A.C. 13:4-5 and 6.

13:4-4.7 [Fact finding] **Fact-finding** conferences

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

[1.] (a) As part of its investigation and at the discretion of the Director, 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, **where appropriate**, exploring the possibility of settlement. The fact-finding conference is not an adjudication of the merits of the verified complaint.

[2.] (b) The Division shall provide the parties with written notice of the **time and place of the fact-finding** conference. [Said] **The** notice shall identify the individuals requested to attend [on behalf of each party,] and [any] **the** documents [which any] **and other evidence each** party is requested to provide within the specified time frame.

[(b)] (c) 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] **the Division employee** shall have discretion over which witnesses shall be heard and the order in which they are heard. The [fact-finder] **Division employee** may exclude any witness or other person from the conference, except that one representative of each party or counsel shall be permitted to remain throughout. In the case of parties that are not individuals, the [fact-finder] **Division employee** may limit attendance at the conference to one representative of each party and counsel.

3. (No change.)

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

5. An attorney for a party who has not previously entered [his or her] **their** 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] **Division employee(s)**, unless [in his or her] **at their** discretion [the fact-finder] **they** permit[s] questions to be asked by other persons present at the conference.

7. At the discretion of the Director, a fact-finding conference may be recorded **by the Division**. The [tape] **recording** shall become part of the Division's investigative file and discovery of the [tape] **recording** will be governed by N.J.A.C. 13:13.

8. During the conference, the [fact-finder] **Division employee** may allow a recess to permit the parties to discuss settlement.

9. The Division will provide, and pay the costs of, appropriate auxiliary aids and services, such as qualified sign language interpreters or translators, when necessary for the [fact-finder] **Division employee** to effectively communicate with a party or witness [at a fact-finding conference].

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

1. [Postponements of a scheduled fact-finding conference] **Parties are discouraged from requesting adjournments, and adjournments** will be granted only for good cause shown. [Parties are discouraged from requesting adjournment from fact-finding conferences.] Requests for adjournments [should] **shall** be [directed] **submitted electronically or by mail, addressed** to the regional manager. Except in extraordinary

circumstances, requests for adjournments must be made upon notice to all parties at least 10 [working] **calendar** days prior to the conference.

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

[(d)] (e) (No change in text.)

13:4-4.8 Director's investigations

(a) The Director, pursuant to N.J.S.A. 10:5-6[.]; 10:5-[8c]8.c, g, h, i, and j[, and]; 10:5-9.1; **and 10:5-13**, may **initiate and** conduct **an** investigation[s] to determine [the extent to which industries] **whether any entity, organization, industry**, groups of industries, business persons, or groups of business persons, or other persons or groups of persons are complying with the Law Against Discrimination or Family Leave Act.

(b) All investigatory and discovery powers [which] **that** the Division may [otherwise] utilize [in the investigation of verified complaints] as set forth in the Law Against Discrimination, the Family Leave Act, and in [these rules of practice and procedure] **this chapter**, 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 a Director's investigation.

SUBCHAPTER 5. DEFAULTS

13:4-5.1 Applicability of default procedure

(a) If a respondent [has been served with] **fails to timely respond** to a verified complaint, **interrogatories**, and/or [the Director has issued] a request for information or documents, [in any form] **and the respondent has not filed a timely motion to dismiss the complaint** pursuant to [N.J.S.A. 10:5-8i, and notice of the consequences of the failure to answer the verified complaint and/or request for information or documents has been given to respondent, and respondent fails either to answer the interrogatories, the verified complaint and/or the request for information or documents or to file] **N.J.A.C. 13:4-7.5, or timely** [a] motion to strike the request for information or documents [within the time specified therein], the Director may, **at their discretion**, initiate the default procedure set forth in this subchapter.

(b) In the event the respondent files a motion to strike the request for information or documents within the time set to answer [the request for information or documents] **such request**, 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]. **If** said motion is granted, the request for information or documents shall be stricken and if said motion is denied the Director shall then follow the **default** procedure set forth below or enter any other appropriate order. The filing of a motion to strike a request for information or documents shall toll the time for filing a response to such a request with the Division until such time as a decision on the motion is rendered.

13:4-5.2 Default procedure

(a) [The Director shall initiate the default procedure] **When the Director determines to initiate the default procedure due to failure of a respondent to file an answer, position statement, or response to a Document and Information request, the Division shall do so** by serving the following notice and order:

"NOTICE is hereby given that a verified complaint has been served upon you charging you with a violation of the Law Against Discrimination (and/or Family Leave Act as is applicable). Pursuant to this Division's authority under N.J.S.A. 10:5-8(i), a verified complaint and/or request for information or documents (as is applicable) has/have been served upon you. The verified complaint and/or request for information or documents has/have not been answered and filed within the time as therein prescribed. Should you fail to fully answer and file the answer[s] to verified complaint, **position statement**, and request for information or documents within [ten] **10 calendar** days, a default shall be entered in this case. Said default shall constitute:

(a) [An] **an** admission that the verified complaint and/or request for information or documents, if answered, would have established facts [in accordance with the claim of the complainant] **consistent with the allegations set forth in the Complaint**;

(b) [A] a waiver of your right to have [this] **the** Division conduct further investigations, [find whether or not there is probable cause, make] **engage in conciliation** efforts or hold a public hearing;

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

**(c) a suppression of any and all defenses to the allegations raised in or arising out of the complaint and/or the investigation; and (d) an entry of a finding against you.**

THEREFORE it is on this \_\_\_\_\_ day of \_\_\_\_, \_\_\_\_, ORDERED:

1. Respondent(s) shall [fully answer and] file [answers] **an Answer** to the verified complaint, **a Position Statement**, [and/or] **and to** requests for information or documents previously served.

2. Respondent(s) shall file said [answers] **Answer, Position Statement, and/or responsive information or documents where required** on or within the tenth **business** day following the date of this order.”

(b) If, after the expiration of the time period set forth by the Director in any Notice and Order served pursuant to (a) above, the respondent has failed to file an answer to the verified complaint, **position statement**, and/or to fully answer and file the request for information or documents with the Director, the Director shall order the entry of a default on the docket of the Division. The entry of such default shall:

1. Constitute a waiver of the respondent’s right to an investigation, [finding of probable cause,] conciliation efforts, or public hearing **on the merits**;

2. (No change.)

3. With respect to any request for information or documents, deem that the requested evidence establishes facts in accordance with the [claim of the complainant] **allegations set forth in the complaint or arising out of the investigation.**

(c) 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. That a verified complaint was filed by the complainant alleging a timely violation of the Law Against Discrimination or Family Leave Act[.];

2. (No change.)

3. That the respondent [has] failed to file an answer to the verified complaint, **position statement**, and/or to [reply] **respond** to the request for information or documents within the time required by the Director’s order as it may have been extended, or **the** respondent has made a motion to strike the request for information or documents and following denial thereafter by the Director has failed to answer within the time required by the Director’s order; and

4. That **the** respondent has been given notice of the consequences of failure to answer the verified complaint, **submit a position statement**, and/or to respond to request for information or documents.

(d) Within 10 **calendar** 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 **the** respondent that the case will be transmitted to the OAL for hearing on a default basis and that transmittal will occur 20 **calendar** days after [receipt by] **service on the** respondent of the notice of entry of default. The notice shall also inform **the** respondent of the opportunity provided by N.J.A.C. 13:4-5.3 for petitioning the Director to vacate the entry of default.

(e) Twenty **calendar** days after **the** respondent [receives] **is served with** notice of the entry of default, the Director shall transmit the case to **the** OAL for the purpose of a hearing on the complainant’s proofs of the allegation of discrimination on a default basis in accordance with N.J.A.C. 13:4-5.4. **In lieu of transmittal to the OAL, the Director may elect to pursue an action in Superior Court pursuant to N.J.S.A. 10:5-13.**

#### 13:4-5.3 Vacation of default

(a) [At any time] **Within 20 calendar days** after [entry] **service of the notice** of default, and before transmittal of the case to **the** OAL, 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 answer[s] to the verified complaint, **the respondent’s position statement**, and **responses to** all requests for information or documents.

(b) (No change.)

(c) If the Director vacates the entry of default at any time prior to the date of transmittal of the case to the OAL, the verified complaint shall instead proceed to an investigation [finding as] **pursuant to** [probable cause] **this chapter**, and where appropriate, conciliation or public hearing as provided by [these rules] **this chapter.**

(d) (No change.)

#### 13:4-5.4 Default hearing and final order

(a) At a default hearing, the proofs shall consist of the order of entry of default, [the] supporting [affidavit] **affidavits**, and any other evidence proffered by the complainant, and the only cognizable issues shall be whether the facts [established by] **alleged in the complaint or arising out of** the [complainant and admitted by respondent] **investigation** constitute [an act of discrimination] **a violation of the Law Against Discrimination and/or Family Leave Act**, and if so, the amount of damages [or] and other [recommended] relief **to be provided.** No evidence proffered by the respondent **on its liability for actions in the verified complaint** shall be admitted or considered at [a] **the** default hearing.

(b) (No change.)

(c) If [discrimination] **a violation of the Law Against Discrimination and/or Family Leave Act** 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] **violations, make the complainant whole, and serve the public interest.**

(d) (No change.)

### SUBCHAPTER 6. ADMINISTRATIVE DISMISSALS

#### 13:4-6.1 Administrative dismissals

(a) The Director may, in [his or her] **their** discretion, administratively dismiss a verified complaint[s] for reasons including, but not limited to, the following:

1.-5. (No change.)

6. The verified complaint, on its face, fails to state a claim for relief under the New Jersey Law Against Discrimination or Family Leave Act; [or]

7. The failure by the complainant to accept reasonable offers to resolve the allegations in the verified complaint[.];

**8. The likelihood of success on the merits after a full investigation and/or hearing; or**

**9. Whether the public interest is best served by the continuation of the proceedings.**

(b) In determining whether to administratively dismiss a verified complaint pursuant to (a)7 above, the Director will take the following factors into account:

1. [Probability] **The likelihood of success on the merits after a full investigation [and] and/or hearing;**

2.-4. (No change.)

5. The evidence of the [amount of] complainant’s mental pain and suffering;

6.-7. (No change.)

(c) Prior to administratively dismissing a case pursuant to (a)7 above, the Director shall notify the complainant of the reason for the dismissal, and shall offer the complainant the opportunity, pursuant to N.J.S.A. 10:5-13, to **have the Division** transmit the action to the Office of Administrative Law [and to], **where the complainant may** present the action [by himself or herself,] **personally** or through [his or her] **their** own counsel at the [hearing] **OAL proceedings.** If the complainant does not request such transmittal of the case within 30 **calendar** days of **service of** the notice by the Division, the matter will be administratively dismissed. When a complainant [files] **files** a request with the Division for transmittal pursuant to this section, the complainant thereby waives any right to have an attorney for the Division prosecute the verified complaint, and the other procedures and requirements set forth at N.J.A.C. 13:4-11.1 apply.



## SUBCHAPTER 7. MOTIONS AND OTHER CASE ACTIONS

## 13:4-7.1 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] **this chapter. Where this chapter fails to address an issue, reference may be made to the New Jersey [courts, except where otherwise provided under these rules] Court Rules.** After transmittal, the procedure shall be in accordance with N.J.A.C. 1:1.

(b) All complainants and respondents, as well as the Division, may file motions **either electronically, by mail, or in person. A copy of the motion papers shall be served on the other party at the time of filing, except where the motion was filed electronically.**

(c) Unless otherwise provided in this chapter, **a party** opposing [parties to] a motion shall file [and serve responsive] **opposing** papers no later than 10 **calendar** days following receipt of the motion. The moving party may file [and serve further papers] **its reply** responding to any matter raised by the opposing party no later than five **business** days after receipt of the [responsive] **opposing** papers. **All papers shall be filed either electronically, by mail, or in person. A copy of all papers shall be served on the other party at the time of filing, except where the papers were filed electronically.**

## 13:4-7.2 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 verified complaint may file an original and two copies of a motion to intervene and shall serve an additional copy on each respondent and complainant by registered or certified mail, return receipt requested.

(b)-(c) (No change.)

## 13:4-7.3 Motions for consolidation or severance of verified complaint

(a) Whenever the Director deems it necessary, [he or she] **they** may order that any verified complaint filed with the Division, and any proceedings [which] **that** may have been initiated with respect thereto, be consolidated with, or severed from, any other verified complaint [which] **that** may have been instituted with the Division.

(b) (No change.)

## 13:4-7.4 Motions for reconsideration

(a) Any party may, within 30 **calendar** 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 seeking review of the agency's decision and/or the reopening of the record for further investigation. The motion shall be in writing and state the grounds upon which relief is sought. The motion shall be **filed electronically or shall be served** upon all opposing parties in accordance with N.J.A.C. 13:4-[7.5]7.6, following which each opposing party may, within 10 **calendar** days following service of the motion, file a response to the motion. The Director may grant such motion and vacate or modify the order, and/or reopen the record upon showing of the following:

1.-4. (No change.)

(b) (No change.)

## 13:4-7.5 Motions to dismiss a complaint

**Any motion to dismiss a complaint shall be supported by affidavit and/or brief. The opposing party may file an opposition to the motion to dismiss. The Director shall rule on the motion to dismiss on the papers, without oral argument. If said motion is granted, any request for information or documents may be withdrawn or modified as determined by the Director.**

## 13:4-[7.5]7.6 Service of motions and other pleadings

(a) Prior to transmittal to **the** OAL, unless otherwise instructed by the Director, every motion and every written notice, brief, or memorandum of law shall be served by the filing party **either electronically or** by mailing copies to all parties within three **calendar** days of said filing.

(b) [Such] **For documents not filed electronically**, documents shall not be deemed served until an affidavit of mailing to all other parties is filed with the Division, **by mail or in person**, 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.

(d) (No change.)

[(e) The Division may, in the discretion of the Director, serve any paper or disposition upon a party by electronic transmission if that party has previously advised the Division that it is willing to accept service in such a manner.]

## SUBCHAPTER 8. WITHDRAWAL OF COMPLAINTS

## 13:4-8.1 Withdrawals

(a) (No change.)

(b) A withdrawal shall be [in writing] **filed electronically, by mail, or in person**, on a form provided by the Division, and shall be signed by the complainant or the complainant's attorney.

(c) Withdrawal of an individual verified complainant shall not preclude the Director from substituting [himself or herself] **themselves** as, or continuing as, a complainant based on the same facts.

## SUBCHAPTER 9. CONCILIATION AND MEDIATION

## 13:4-9.1 Timing of conciliation proceedings

(a) At any time beginning with the filing of the verified complaint and ending with the closure of the case, or 45 **calendar** days from the date of a finding of probable cause, the Division shall, to the extent feasible, commence conciliation proceedings, which may, [in] **at** the discretion of the Director, include mediation conducted by a mediator designated by the Director with respect to the verified complaint.

**(b) The Director may cease conciliation proceedings when a respondent has declared its unwillingness to participate in conciliation or where the Director determines that a respondent is not engaging in conciliation in good faith.**

## 13:4-9.2 Confidentiality of conciliation and mediation records

Settlement proposals or other information exchanged during a conciliation conference or mediation proceedings shall be kept confidential by all persons involved in the conciliation conference or mediation proceedings and shall not be admissible as evidence unless obtained from a source independent of the conciliation or mediation. Conciliation and mediation agreements shall be available to the public unless the [complainant and respondent] **parties** otherwise agree and the Attorney General determines that disclosure is not required to further the purposes of the law or otherwise required by law.

## 13:4-9.3 Mediation proceedings

(a)-(b) (No change.)

(c) If mediation is unsuccessful and the respondent has not yet filed an answer to the verified complaint **or a position statement**, such answer and **position statement** and the responses to [the Division's] **any** Document and Information Request must be filed within 20 **calendar** days of [the respondent's receipt] **service** of [notification] **notice on the respondent** that the matter is being transferred to the Bureau of Enforcement for further investigation.

(d) If the Director finds that there has been a breach of the mediation agreement, the Director may, in [his or her] **their** discretion, reopen the verified complaint for investigation or seek to enforce the agreement.

## 13:4-9.4 Conciliation conference proceedings

(a) After a finding of probable cause, the Director or [his or her] **their** representative shall[, to the extent feasible, schedule a conciliation conference and] engage in conciliation with respect to the verified complaint **and may, at the Director's discretion, direct that the respondent appear at a conciliation conference.**

(b) The respondent shall have at least five [days] **calendar-days'** notice of the time and place of [the] **any** conciliation conference.

(c) [This] **The notice at (b) above** shall contain a provision advising the respondent that in the event conciliation is unsuccessful, a public hearing will be held.

(d) Failure to attend the conciliation conference may, **at the discretion of the Director**, be deemed to be an unsuccessful attempt at conciliation.

(e) Any conciliation agreement arising out of conciliation efforts by the Division shall be an agreement between the [respondent and the complainant or complainants,] **parties** and shall be subject to the approval of the Division.

(f) (No change.)

#### SUBCHAPTER 10. ORDERS OF THE DIRECTOR

##### 13:4-10.1 Orders and findings of **the** Director

At any time during the course of the proceedings, the Director may enter such orders, including protective orders and orders of dismissal, as may be necessary to effectuate the processing and determination of a case as [he or she] **they** may deem appropriate to further the intent and purposes of the Law Against Discrimination or Family Leave Act. When a case is pending before the OAL, the procedures set forth at N.J.A.C. 1:1 shall apply.

##### 13:4-10.2 Findings of probable cause

(a) (No change.)

(b) If the Director determines based upon a review of the investigative findings that there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person [in the belief] **to believe** that the Law Against Discrimination or Family Leave Act has been violated, [he or she] **they** shall issue a finding of probable cause.

(c) If the Director determines based upon a review of the investigative findings that there is not a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person [in the belief] **to believe** that the Law Against Discrimination or Family Leave Act has been violated, [he or she] **they** shall issue a finding of no probable cause.

(d) If the Director determines based upon a review of the investigative findings that probable cause exists as to some, but not all, of the allegations of the verified complaint, [he or she] **they** shall issue an agency determination setting forth those issues to which the Director finds that probable cause exists and those issues to which the Director finds that no probable cause exists. Any subsequent hearing on the verified complaint shall be limited to those issues in which the Director determines that probable cause exists.

(e) (No change.)

**(f) In any finding of probable cause or no probable cause the Director may, in their sole discretion, use a pseudonym in place of the full name of the complainant or any witness when the complainant or witness is a minor, or where identification of the complainant or witness would involve disclosure of confidential personal information or adversely affect the privacy interests of the complainant or witness.**

#### SUBCHAPTER 11. HEARINGS

##### 13:4-11.1 When hearings ordered

(a) (No change.)

(b) When the Director has determined pursuant to N.J.A.C. 13:4-10.2(b) **or (d)**, that probable cause exists to credit the allegations of a verified complaint and 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 **calendar** 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 herself] **themselves** or through [his or her] **their** own attorney to the Office of Administrative Law. Such request shall be in writing and signed by the complainant or [his or her] **their** attorney.

(d) (No change.)

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

(f) When the Director orders a hearing pursuant to (b) above, the attorney for the Division shall present the case in support of the verified complaint to the Office of Administrative Law. If the complainant does

not wish to rely on the Division's prosecution of the verified complaint, [he or she] **they** may request to present the case by [himself or herself] **themselves** or through [his or her] **their** own attorney to the Office of Administrative Law pursuant to (c) above.

(g) (No change.)

#### SUBCHAPTER 12. PROTECTION OF COMPLAINANTS AND WITNESSES

##### 13:4-12.1 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] **they have** opposed any practices or acts forbidden under the Law Against Discrimination or Family Leave Act or because [he or she has] **they have** filed a complaint, testified, or assisted in any proceeding **or investigation** under the Law Against Discrimination or Family Leave Act.

(b) For the purposes of this section, all persons who have been, are, or will be **the** respondents in proceedings before the 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 [unnecessary] **necessary** to preserve the status quo and to protect the best interests of the parties, **as well as the public interest.**

#### SUBCHAPTER 13. ACCESS TO DIVISION'S INVESTIGATORY FILES

##### 13:4-13.1 Confidentiality of Division's investigatory files

[Except] **In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other law, rules promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation, or Federal order, and except as otherwise set forth in this subchapter, the Division's investigatory records shall be considered confidential and exempt from public access [under] pursuant to N.J.S.A. 47:1A-1 et seq., other than any final agency disposition or any finding of probable cause.**

##### 13:4-13.2 [Discovery of] **Access to the** Division's investigatory files by parties to the verified complaint

(a) After a finding of probable cause has been issued by the Director, after transmittal to **the** 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 to a verified complaint may, upon [written] request and notice to all other parties, receive [discovery of] **access to** the following information in the Division's investigatory file of that verified complaint:

1. Statements made by any [person] **party or witness** during the course of the Division's investigation[, other than work product of Division employees, intra-agency communications, notes of settlement discussions and attorney-client communications];

2. All factual written reports, or sound recordings, made by the field investigator or other employee or agent of the Division **memorializing any witness or party interview, fact-finding conference, or site visit; and**

3. All [factual written data, factual written reports or] documentary information **submitted by either party or by any witness[:]; and**].

[4. Reports of factual statements made at a fact-finding conference, except that records of settlement discussions during the conference shall not be discoverable.]

**(b) Parties shall not be provided work product of Division employees or agents, any attorney work product, intra-agency communications, attorney-client communications, records pertaining to settlement discussions, or any other privileged material that may be contained in the Division's investigative file.**

[(b)] **(c)** When [an objection is made to] a [discovery] request [on the grounds that it] **for access to material in the Division's investigative file** seeks confidential or privileged material, or [that] **where** the purpose of the request is to oppress any party or to delay the resolution of the case, the Director may refuse, terminate, or limit [discovery] **access** as the circumstances warrant, including issuance of protective orders. **At the**

discretion of the Director, information that is deemed confidential and/or private may be redacted prior to disclosure.

(d) Nothing in this subchapter shall preclude the Division from showing a party or witness a document from the investigative file during the pendency of an investigation when deemed necessary by the Division to complete the investigation.

13:4-13.3 [Discovery of Division's investigatory files by non-parties] (Reserved)

[Non-parties to a verified complaint shall not have access to the material in the Division's investigatory files of that verified complaint, except that non-parties may inspect and receive a copy of the verified complaint, the answer, the final disposition, and the dispositions of any motions made during the pendency of the case. When a verified complaint is taken pursuant to N.J.A.C. 13:4-2.10, non-parties may only inspect the pseudonym verified complaint.]

## TREASURY—GENERAL

### (a)

#### DIVISION OF REVENUE AND ENTERPRISE SYSTEMS

#### Development of Women-Owned and Minority-Owned Small Businesses

#### Proposed New Rules: N.J.A.C. 17:46

Authorized By: Elizabeth Mauer, State Treasurer.

Authority: N.J.S.A. 52:18A-30, 52:27H-21.7 et seq., and 52:32-17 et seq.; P.L. 2008, c. 27; and Executive Order Nos. 71 (2003) and 34 (2006).

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

Proposal Number: PRN 2020-080.

Submit comments by October 16, 2020, electronically to the New Jersey Department of the Treasury at [https://www.state.nj.us/treas/treas\\_comments.shtml](https://www.state.nj.us/treas/treas_comments.shtml).

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Jennifer Keyes-Maloney  
Assistant Treasurer  
225 West State Street  
Trenton, NJ 08625-0295  
[Jennifer.maloney@treas.nj.gov](mailto:Jennifer.maloney@treas.nj.gov)

The agency proposal follows:

#### Summary

N.J.S.A. 52:27H-21.17 et seq. (the Act), establishes a program for certifying entities as minority or women's businesses, and delineates the documentation required to establish that an entity qualifies as such a business under the Act. Additional statutes address the use of the certification as a qualification in purchasing and procurement systems run by the State and its related entities.

At one time, the minority and women's business certification program was administered by the New Jersey Commerce Commission; however, P.L. 2008, c. 27, abolished the New Jersey Commerce Commission and transferred the functions, powers, and duties of the Division of Development for Small Businesses and Women's and Minority Businesses to the Department of the Treasury, to be administered within that department as the State Treasurer so determined. The State Treasurer has allocated the functions, powers, duties, and authority for the chapter to the Division of Revenue and Enterprise Systems (Division) in the Department of the Treasury (Department). Pursuant to that change, rules were promulgated in April of 2009 in accordance with N.J.S.A. 52:14B-1 et seq. Those rules expired on April 20, 2016.

The purpose of the Act and Chapter 46 is to set forth the manner in which the Division may assist in providing equal opportunity for minority and women's businesses to participate in the State purchasing and

procurement processes. The objective of the rules was then, and continues to be, the implementation of N.J.S.A. 52:27H-21.17 et seq., 52:32-17 et seq., and 52:18A-30; P.L. 2008, c. 27; and Executive Order Nos. 71 (2003) and 34 (2006).

The Division seeks to propose new rules, consistent with the prior rules, to operationalize the requirements of the law, and to recognize current practice. The Division is allowing a 60-day comment period for this notice of proposal; therefore, this notice falls under the exception at N.J.A.C. 1:30-3.3(a) pertaining to the requirement for calendar notice.

Following is a summary of the provisions of each section of the proposed new chapter:

N.J.A.C. 17:46-1.1 sets forth the scope of the Division's role in the New Jersey Department of the Treasury with regard to the certification of minority and women's firms. N.J.A.C. 17:46-1.1 references P.L. 2008, c. 27, which authorized the transfer of the functions, powers, and duties, including the certification function, of the Division of Development for Small Businesses and Women's and Minority Businesses to the Division of Minority and Women Business Development in the Department of the Treasury.

N.J.A.C. 17:46-1.2 contains the definitions used in the chapter to reflect current operational practices and business requirements, as well as to incorporate definitions from the statute. In addition, several definitions seek to clarify or specify rights of appeal or challenge to certification determinations.

N.J.A.C. 17:46-1.3 outlines the eligibility requirements to qualify for certification as a minority business or women's business.

Certification procedures are set forth at N.J.A.C. 17:46-1.4. Initial certification is a one-year, provisional certification. N.J.A.C. 17:46-1.4 sets forth the documentation that must be submitted in order to demonstrate initial eligibility and to maintain eligibility in the following years. It also addresses recertification at the end of the three-year period. Additionally, the section lays out the required fees and establishes a means for challenging denial of certification.

N.J.A.C. 17:46-1.5 outlines what happens when a business is determined to be a minority or women's business, including eligibility for all appropriate State programs and initiatives designed to ensure equal opportunity for minority and women's businesses to participate in State purchasing and procurement processes.

N.J.A.C. 17:46-1.6 specifies that, in general, a business may apply to be certified at any time and includes appeal procedures for addressing denial of, or revocation of, certification.

N.J.A.C. 17:46-1.7 provides a process for withdrawal from either the minority or women's business programs.

N.J.A.C. 17:46-1.8 provides a process, and rules for appeal of, a denial or revocation of certification under the program.

N.J.A.C. 17:46-1.9 outlines the procedures for challenging the Division's determination that a business is eligible for certification as a minority business and/or women's business.

N.J.A.C. 17:46-1.10 requires submission of accurate information and sets penalties for supplying false information or withholding required information.

N.J.A.C. 17:46-1.11 provides a procedure for certification reciprocity for entities that have been deemed sufficient under the Federal Disadvantaged Business Enterprise program, pursuant to P.L. 114-94 (December 4, 2015).

Finally, N.J.A.C. 17:46-1.12 specifies that, beyond certain information that must be publicly disseminated, information submitted to the Division as part of a certification application is deemed confidential and not subject to disclosure. Further, all documents provided to the Division are confidential and not subject to disclosure.

#### Social Impact

The adoption of N.J.A.C. 17:46 will provide for the continued implementation of the Division of Development for Small Businesses, and Women's and Minority Businesses Act, N.J.S.A. 52:27H-21.7 et seq. The purpose of the Act and this chapter is to foster participation by minority and women's businesses in the purchasing and procurement processes of the State, the various types of State entities, and casino licensees. The adoption of this chapter will help businesses interested in certification