SUBTITLE J DIVISION OF HUMAN RIGHTS 465
Effective February 17, 1999
PART 465
RULES OF PRACTICE

465.1 Definitions. When Used in this Part:

(a) The term administrative office shall mean that office wherein are located the offices of the commissioner, deputy and assistant commissioners, general counsel, director of regional affairs, chief administrative law judge and their assistants.

(b) The term regional office shall mean an office duly established by the division for the receipt and/or investigation of complaints.

(c) The term executive deputy commissioner shall mean that person responsible for general administration of the agency, as specified by the commissioner.

(d) The term deputy commissioner for regional affairs shall mean that person designated by the commissioner to head the bureau charged with the receipt and investigation of complaints and supervise the regional directors.

(e) The term general counsel shall refer to the chief legal representative of the agency.

(f) The term adjudication counsel shall mean the attorney who reviews the recommended orders of the administrative law judges for ultimate determination by the individual empowered to execute Division orders.

(g) The term administrative law judge shall mean hearing examiner as defined in the law. The term or chief administrative law judge shall mean that administrative law judge designated by the commissioner to supervise the administrative law judges. (h) The term regional director shall mean the division employee duly designated by the commissioner to administer a regional office of the division.

(i) The term division attorney shall mean the general counsel of the Division of Human Rights or anyone designated by the general counsel or by the commissioner to act as its attorney.

(j) The term Law shall mean the New York State Human Rights Law.

(k) A word or term defined in the Law shall have the same meaning when used in this Part.

465.2 Service of papers.

Determinations, notice of hearing, complaints, respondents' answers, and division decisions, findings of fact and orders shall be served by personal service or registered or certified mail, or ordinary, first class mail. However, where a nonresident person or foreign corporation is charged with violating any provision of the law by virtue of the provisions of section 298-a thereof, the complaint and notice of hearing shall be served only by personal service or by registered mail, return receipt requested, directed to such person or corporation at the last known place of residence or business.

465.3 Complaint.

(a) Who may file:
(1) Any person or organization claiming to be aggrieved by an alleged unlawful discriminatory practice may, in person or by an attorney-at-law, make, sign and file with the regional office a verified complaint in writing. Assistance in drafting and filing complaints shall be available to complainants at all regional offices in person, by telephone or by mail. If a complainant lacks mental capacity, the complaint may be filed on his or her behalf by a person with a substantial interest in the welfare of the complainant.
(2) The Commissioner of Labor or the Attorney General or the Chair of the Commission on Quality Care for the Mentally Disabled may, in like manner, make, sign and file such a complaint.
(3) On its own motion, or on the application of an interested person, the division may initiate its own complaint.
(4) Any complaint filed in accordance with paragraph (1), (2), or (3) of this subdivision may be filed on behalf of a class of persons similarly situated.
(5) Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of the New York State Human Rights Law may file with the division a verified complaint asking for assistance by conciliation or other remedial action.
(6) Employees of the division may file complaints as stated; provided, however, that no such person may file a complaint against the division itself.

(b) Form. The complaint shall be in writing, either on a form promulgated by the division or on any paper suitable for a complaint. The original shall be signed and verified before a notary public or other person duly authorized by law to take acknowledgments. Notarial service shall be furnished without charge by the division. "Nunc pro tunc" verifications of a complaint or an answer thereto may be made at any time that the absence of a signed verification is noted.

(c) Contents. A complaint shall contain the following:
(1) The full name and address of the person making the complaint (hereinafter referred to as the "complainant").
(2) The full name and address of each respondent against whom the complaint is made.
(3) The alleged unlawful discriminatory practice and a statement of the particulars thereof. A respondent may apply in writing, pursuant to the State Administrative Procedure Act, section 301, to the division attorney after service of a notice of hearing, for a more definite or detailed statement. Such application shall state, with specificity, the instances in which the complaint is insufficiently definite and detailed. If the division attorney believes that the complaint is not sufficiently definite or detailed, he or she shall provide such a statement. Otherwise the application shall be referred to the chief hearing examiner, or to the hearing examiner after the hearing has commenced, who shall issue such directions, if any, as may be appropriate.
(4) The date of dates of the alleged unlawful discriminatory practice and, if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred.
(5) A statement as to any other action, civil or criminal, instituted in any other forum, and as to any pending administrative proceeding based on the same grievance as is alleged in the complaint, together with a statement as to the status or disposition or such other action.

(d) Place of filing. A complaint shall be filed with the Division of Human Rights at any of its regional offices, or other place designated by the division.

(e) Time of filing. The complaint must be filed within one year from the date of the occurrence of the alleged unlawful discriminatory practice. If the alleged unlawful discriminatory practice is of a continuing nature, the date of its occurrence shall be deemed to be any date subsequent to its inception, up to and including the date of its cessation.

(f) Manner of filing. The complaint may be filed by personal delivery, ordinary mail, registered mail or certified mail, addressed to any of the division's offices. (g) Service. A copy of the complaint shall be promptly served by the division on the respondents and all persons the division deems to be necessary parties, on its own motion or on application of a respondent. A copy of all amendments to the complaint shall be served by the division on all parties to the proceeding, except such amendments to the complaint as are made to more correctly identify a respondent or necessary party previously served. A copy of any complaint filed against any respondent who has previously entered into a conciliation agreement, or as to whom an order of the division or its predecessor, the State Commission for human rights, has previously been entered, shall be delivered to the Attorney General, to the Secretary of State if the secretary has issued a license to the respondent, and to such other public officers as the division deems proper.

465.4 Amendments to complaint.

(a) Power to amend. The division or the complainant shall have the power reasonably and fairly to amend the complaint. No party may be removed by any amendment. After a hearing is commenced before an administrative law judge, any amendment is subject to the discretion of the administrative law judge.

(b) Complainant's power.
The complainant has the right to amend the complaint in a reasonable manner before the commencement of a hearing.

(c) Division's power. The regional director, division attorney, or administrative law judge may reasonably amend the complaint.

(d) Any amendments made after a probable cause determination are not subject to any further investigations or determinations of probable cause.

(e) Service.
(1) Any amendment to a complaint shall be served upon all parties unless made upon the record at a public hearing before an administrative law judge. If an amendment adds new parties, a copy of the notice of hearing must be served upon such parties.

(2) When a complaint is amended after an answer has been filed but before the hearing, each respondent who has filed an answer shall be allowed to file an amended answer with the division attorney at least two business days prior to the hearing.

465.5 Withdrawals, discontinuances and dismissals before a hearing.

(a) Withdrawal. A pending complaint, or any part thereof, may be withdrawn by the complainant at any time before the service of a notice of hearing. Such a withdrawal shall be in writing and signed by the complainant. Such withdrawal does not preclude the division from filing a complaint on its own motion based on the same facts.

(b) EEOC Complaints. A complaint filed by the Equal Employment Opportunity Commission on or after July 15, 1991, to comply with the requirements of 42 USC §2000e-5(c), or on or after June 16, 1992, to comply with the requirements of 42 USC §12117(a) or 29 USC §633(b) shall not constitute a filing within the meaning of Human Rights Law §297.9, and shall not require a dismissal from the division where complainant seeks to pursue the above remedies in court.

(c) Discontinuance.
(1) After the service of the notice of hearing a proceeding may be discontinued by the complainant on notice to the respondent and with the consent of the commissioner.
(2) The application to discontinue shall be in writing, signed by the complainant or complainant's attorney, or made upon the record at a public hearing before an administrative law judge.

(d) Dismissal for lack of jurisdiction or probable cause.
(1) If the division finds, either on the face of the complaint or after investigation, with respect to any respondent or any charge, that it lacks jurisdiction or that probable cause does not exist, the complaint shall be dismissed as to such respondent, or charge, by the regional director or director of regional affairs.
(2) A complaint against a nonresident person or foreign corporation under section 298-a of the New York State Human Rights Law shall be dismissed if the division finds, either on the face of the complaint or after investigation, with respect to such respondent that it lacks jurisdiction or that there is no reason to believe that such respondent has committed or is about to commit outside of this State an act which, if committed within this State would constitute an unlawful discriminatory practice.
(3) The regional director shall issue and serve upon all parties an order dismissing said complaint, in whole or in part, which shall state the grounds for such dismissal of those charges or respondents against whom the dismissal order is directed, and shall contain notice to the complainant of the right to appeal to the Supreme Court of the State in the judicial department embracing the county wherein the unlawful discriminatory practice which is the subject of the order occurs.

(e) Dismissal for administrative convenience.
(1) If the division finds that the complainant's objections to a proposed conciliation agreement are without substance or that noticing the complaint for hearing would be otherwise undesirable,

the division may, in its discretion at any time prior to the taking of testimony at a public hearing before an administrative law judge, dismiss the complaint on grounds of administrative convenience.
(2) The grounds for dismissal of a complaint for administrative convenience may include, but not be limited to, the following:
(i) the complainant's objections to a proposed conciliation agreement are without substance;
(ii) the complainant is unavailable or unwilling to participate in conciliation or investigation, or to attend a hearing;
(iii) relief is precluded by the respondent's absence or other special circumstances;
(iv) holding a hearing will not benefit the complainant;
(v) processing the complaint will not advance the State's human rights goals; or
(vi) the complainant has initiated or wants to initiate an action or proceeding in another forum based on the same grievance, where the administrative convenience dismissal would not contravene the election of remedies provisions contained in §297.9 or §300 of the Law.

(3) The division, by the commissioner, the deputy commissioner for regional affairs, or the regional director shall issue and serve upon all parties an order dismissing said complaint, which shall state the grounds for such dismissal and shall contain notice to the complainant of a right to appeal to the Supreme Court in the county wherein the unlawful discriminatory practice which is the subject of the order occurs.

465.6 Investigations.

(a) Investigation. After the filing of a complaint, the regional director of the division office in which it was filed, or to which it has been transferred, shall make, with the assistance of staff, a prompt and fair investigation of the allegations of the complaint.

(b) Methods. Such investigation may be made by field visit, written or oral inquiry, conference, or any other method or combination thereof deemed suitable in the discretion of the regional director or the director of regional affairs.

465.7 Conciliation.

(a) Endeavors.
(1) The division may, at any time after the filing of the complaint, endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion.
(2) A conciliation proceeding, to be attended by the parties, should be convened in all appropriate cases by the division, prior to a determination after investigation, in an attempt to resolve the parties' differences. Reasonable adjournments of such conciliation proceeding may be given at the discretion of the investigator or the regional director. Failure of a party to attend the proceeding or cooperate with the investigator may result in a determination based on the material already in the record, with the party who absented him or herself for insufficient reasons barred from submitting additional evidence prior to the determination of cause or no cause.

(3) Offers of conciliation by respondent shall be reviewed by the regional director to determine whether such conciliation offer is substantial enough to require a determination, in the public interest, to terminate the proceeding, on notice to complainant, if the complainant unreasonably refuses to accept the conciliation. The following criteria are among those which should be considered:
i. probability of success after full investigation;
ii. reasonableness of offer;
iii. reasonableness of complainant's refusal, if any;
iv. the amount of the complainant's economic loss, and
respondent's degree of responsibility therefor;
v. in appropriate cases, the evidence of the amount of complainant's mental pain and suffering;
vi. the egregiousness of the discrimination charged;
vii. whether the public interest is best served by the continuation of the proceedings.
(4) Objections by a complainant to a proposed conciliation agreement must be written and shall be delivered or mailed within 15 days of the service of the proposed agreement by the division upon complainant, or earlier, i.e., if made in the context of a conciliation proceeding where both parties or their representatives are present. If the agreement was served by mail, the time for objections shall be extended by five days. The objections shall be specific and in detail.
(5) Where the regional director finds the terms of the proposed conciliation agreement to be in the public interest, and that the complainant's objections to the proposed conciliation agreement are without substance, he or she may
i. dismiss the complaint for administrative convenience;
ii. take other appropriate action pursuant to §297.3(c) of the Law; or
iii. upon request of respondent, issue an recommended equitable order, for consideration by the commissioner, providing that the respondent will pay the complainant the amount proposed in the conciliation agreement and dismissing the complaint on the merits.

(6) A special conciliation calendar shall be maintained to schedule all pre-determination conciliations.
(7) Notice of conciliation hearings shall be accompanied by a statement advising complainant of a possible waiting period before the case is heard by an administrative law judge, based upon then current division statistics, updated every six months.

(b) Terms. The terms of a conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future, and may contain such further provisions as may be agreed upon by the regional director and the respondent.

(c) Nondisclosure. The division shall not disclose what has transpired in the course of its endeavors at conciliation and persuasion, except to the parties and their representatives.

(d) Successful conciliation.
(1) If the respondent agrees to the terms of conciliation, as prepared by the regional director, then the regional director shall serve it upon the complainant.

(2) If the complainant agrees to the terms of the agreement, or fails to object to such terms within 15 days after its service, the division may formally enter into the proposed conciliation agreement by issuing an order embodying such conciliation agreement. The division shall serve a copy of such order upon all parties to the proceeding.

465.8 Probable cause review.

(a) The regional director must review all recommendations as to determinations after investigation made by an investigator, for accuracy of facts and legal sufficiency. The regional director shall keep a register of all determinations after investigation made by him or her after such review, with notation of the date of determination after review, and a comment if necessary.

(b) A special unit, called the Review Unit, will review probable cause determinations as necessary. If such unit determines that the record of investigation does not support a finding of probable cause, it may order such matter reopened and dismissed, or in the appropriate case, reopened and remanded to the regional office with instructions as to further proceedings.

465.9 Injunctions.

(a) At any time after the filing of a complaint, the commissioner, by the regional director, director of regional affairs or the division attorney, may seek an injunction against the doing or procuring of any act tending to render ineffectual any order the commissioner may enter in the proceeding, in the manner provided by section 297, subdivision 6, of the New York State Human Rights Law.

(b) The seeking of such an injunction may be on the division's own motion or on request of a party or attorney.

465.10 Pre-Hearing Settlement Calendar.

Prior to the issuance of the Notice of Hearing, a settlement calendar may be held wherein each case where probable cause has been found may be considered for settlement.

Notice of Pre-Hearing Settlement Calendar: A notice of pre-hearing Settlement Calendar shall be served upon all the parties to the proceeding.

Such notice shall contain the following language, which shall be adhered to in practice in substantial form:

IMPORTANT NOTICE

THE FIRST SESSION OF THE PUBLIC HEARING DESCRIBED IN THIS NOTICE SHALL BE DEVOTED EXCLUSIVELY TO THE SETTLEMENT OF THE MATTER.

THEREFORE, counsel or the representatives of the parties must attend this hearing with the full authority to settle the matter.

NO ADJOURNMENT OF THIS PRE-HEARING BEFORE THE HEARING DATE SHALL BE GRANTED EXCEPT FOR GOOD CAUSE SHOWN IN WRITING DELIVERED TO THE PRESIDING ADMINISTRATIVE LAW JUDGE WHO, IN HIS OR HER DISCRETION, MAY GRANT OR DENY THE REQUEST.

THE REQUEST FOR ADJOURNMENT SHALL BE FILED WITH THE PRESIDING ADMINISTRATIVE LAW JUDGE AND SERVED ON GENERAL COUNSEL OF THE DIVISION AND ANY OTHER OPPOSING COUNSEL NO LESS THAN FIVE (5) DAYS BEFORE THE DATE SET FOR THE PRE-HEARING.

IF THE PRESIDING ADMINISTRATIVE LAW JUDGE GRANTS THE ADJOURNMENT, THE CONFERENCE WILL BE RESCHEDULED TO THE NEXT AVAILABLE PRE-HEARING CONFERENCE DATE IN THAT COUNTY.
EX PARTE REQUESTS FOR ADJOURNMENT WILL BE AUTOMATICALLY DENIED.

EVERY REQUEST FOR AN ADJOURNMENT SHALL BE DEEMED A WAIVER BY THE REQUESTING PARTY OF ANY PRESENT OR FUTURE OBJECTION ALLEGING THAT THE STATE DIVISION OF HUMAN RIGHTS HAS FAILED TO PROCESS THE COMPLAINT IN A TIMELY MANNER.

Please be advised that the parties to the complaint may, at any time prior to the taking of testimony at a public hearing, mutually agree to submit the complaint for binding arbitration before the American Arbitration Association.

465.11 Notice of hearing and answer.

A notice of hearing together with the complaint as amended shall be served as provided in section 297.4(a) of the New York State Human Rights Law.

(a) Time of filing an answer. At least two business days prior to the hearing, the respondent shall, and any necessary party may, file a written answer to the complaint, sworn to subject to the penalties of perjury.

(b) Place and manner of filing of answer. The answer must be filed with the division in triplicate in the office of the general counsel of the division, and a copy served upon each attorney of record and upon each party not represented by an attorney.

(c) Form of answer.
(1) The answer shall be in writing, the original being signed and sworn to subject to the penalties of perjury. The answer shall contain the party's address, telephone number and, if made by an attorney, the name and post-office address and telephone number of said attorney.

(2) The answer shall contain a separate and specific response to each and every particular of the complaint or a denial of any knowledge or information thereof sufficient to form a belief. Any matter constituting an affirmative defense, including lack of jurisdiction, shall be stated separately and with particularity in the answer.
(3) Any allegation in the complaint which is not denied shall be deemed admitted.

(d) Amendment of answer. A party shall have the power reasonably and fairly to amend its answer, subject to the discretion of the administrative law judge.

(e) Default. If the respondent fails to answer the complaint, the administrative law judge may enter the default, and the hearing shall proceed on the evidence in support of the complaint. Upon application, the administrative law judge or chief administrative law judge may, for good cause shown, open a default in answering, upon equitable terms and conditions, including the taking of an oral answer.

465.12 Hearings.

Hearings shall be held as provided in section 297.4(a) of the New York State Human Rights Law.

(a) Consolidations. Two or more complaints may be scheduled simultaneously before the same administrative law judge, who may consolidate or sever them.

(b) Appearances.
(1) All parties to the proceeding, other than a respondent whose default in answering has not been excused, may be present and shall be allowed to present testimony in person or by counsel and cross-examine witnesses.
(2) If a notice of hearing has not been delivered to a party, the division in its discretion may postpone a scheduled hearing to determine whether that party expects to attend a hearing, or whether the complaint should be dismissed for administrative convenience, default entered, or other appropriate action taken.
(3) If a respondent fails to appear at the duly noted time and place of the hearing and the hearing is not adjourned, irrespective of whether an answer to the complaint has been filed, the hearing shall proceed on the evidence in support of the complaint. Upon application, the administrative law judge or chief administrative law judge may, for good cause shown, reopen the proceeding, upon equitable terms and conditions.
(4) Prior to an order after hearing, a default entered upon a respondent's failure to appear may be reopened, for good cause shown, upon written application to the administrative law judge or chief administrative law judge. (c) New parties.
(1) In the discretion of the administrative law judge, any other person who has a substantial personal interest may be allowed to intervene as a party, in person or by counsel.
(2) The administrative law judge may require that any person not already a party be joined as a necessary party to the proceeding. A party may move that a person be joined as a necessary party.

(3) In such joinder, the hearing shall be adjourned unless the person ordered to be joined is present and consents to waive service of notice of hearing and pleadings and to proceed as if he or she had been designated as such necessary party in the original complaint.
(4) In the event of such adjournment, the division shall serve a new notice of hearing and an amended complaint upon the person so joined and upon all other parties, and shall also serve on the person so joined copies of the previous pleadings and a notice that the prior hearing record may be examined at the division's offices during normal business hours, by appointment.

(5) Upon such waiver of notice by a person who is present, or upon service of such new notice of hearing and an amended complaint, the hearing shall proceed as if the party so joined had been designated in the original complaint. (d) Who shall conduct.
(1) Hearings shall be conducted by an administrative law judge designated by the division. All case assignments shall be made by the chief administrative law judge. All calendaring decisions shall be subject to the approval of the chief administrative law judge. No person who shall have previously made the investigation, engaged in a conciliation proceeding or caused the notice of hearing to be issued, shall act as an administrative law judge in such case.
(2) The division may, in its discretion, at any time prior to the completion of a hearing, substitute one administrative law judge for another. The hearing shall continue upon the previous record.

(3) Disqualification of an administrative law judge. If a party files a timely and sufficient affidavit of personal bias or disqualification of an administrative law judge, the matter shall be referred to the chief administrative law judge, who shall permit other parties to submit affidavits, and then shall determine the matter upon such affidavits. If an affidavit is submitted to disqualify the chief administrative law judge, the matter shall be referred to the executive deputy commissioner for determination. Any such determination shall be made part of the record in the case.

(e) Form and content of proof. The administrative law judge, in conducting the hearing, should utilize any procedures consonant with due process to elicit evidence concerning the ultimate issues. The following guidelines shall govern.
(1) Hearsay evidence is fully admissible.
(2) There shall be no required order to the presentation of the evidence.
(3) Documentary evidence may be admitted without testamentary foundation, where reasonable.
(4) Witness information need not be introduced in the form of question and answer testimony.
(5) Information from witnesses may be introduced in the form of affidavits, without oral examination and cross examination.
(6) The parties shall not be denied the right to examine or cross examine a witness, where necessary and reasonable.
(7) Oral testimony shall be given under oath.
(8) Evidence shall not be received in camera.
(9) Written stipulations may be introduced in evidence if signed by the person sought to be bound thereby or by that person's attorney-at-law. Oral stipulations may be made on the record at open hearing. The entire record may be in the form of a stipulation, submitted to the chief administrative law judge without the convening of a hearing before an administrative law judge.

(10) All materials relating solely to conciliation or settlement discussions shall be placed in a separate folder and shall not form part of the formal evidentiary record. All settlement discussions shall be held in camera.
(11) Where reasonable and convenient, the administrative law judge may permit the testimony of a witness to be taken by telephone, subject to the following conditions:
i. a person within the hearing room can testify that the voice of the witness is recognized, or identity can otherwise be established;
ii. the administrative law judge, reporter and respective attorneys can hear the questions and answers;
iii. the witness is placed under oath and testifies that he or she is not being coached by any other person.
(12) Where affidavits or other forms of proof are not sufficient, an administrative law judge may authorize a deposition to be taken on oral or written questions and shall admit such deposition into evidence at a hearing in lieu of the personal appearance and testimony of the deponent at the hearing, subject to the following conditions:
i. All parties and counsel have been offered a reasonable opportunity to participate in the taking of the deposition and to cross-examine thereat.
ii. The deponent is unable to come to a hearing for any reason of personal hardship.
iii. The deposition was taken before any person authorized to administer an oath in the place where the deposition is taken, and is either subscribed and sworn to by the deponent, or certified as accurate by the stenographer, or is taken in the form of a tape recording.
iv. The absence of cross-examination shall not be a bar to the admission of such deposition; provided, however, that if justice so requires, the deponent may be subject to further inquiry by additional deposition.
v. Any other reasonable condition fixed by the administrative law judge.
(f) Powers of the administrative law judge. The administrative law judge shall have the following powers to control the presentation of the evidence and the conduct of the hearing:
(1) to fully control the procedure of the hearing, subject to these rules, and to rule upon all motions and objections, and make recommended orders as to motions to dismiss and summary judgment motions;
(2) to refuse to consider objections which unnecessarily prolong the presentation of the evidence;
(3) to foreclose the presentation of evidence that is cumulative, argumentative, or beyond the scope of the case;
(4) to place evidence in the record without an offer by a party;
(5) to call and to examine witnesses;
(6) to administer oaths;
(7) to exclude non-party witnesses who have not yet testified from the hearing room;
(8) to direct the production of documents and other evidentiary matter;
(9) to propose stipulations of fact for the parties' consideration;
(10) to issue interim or tentative findings of fact at any point during the hearing process;
(11) to issue questions delimiting the issues for hearing;
(12) to propose settlement terms for the parties' consideration at any time during the proceeding, or to issue an equitable order as set forth more fully in (m) of this rule;
(13) to direct further hearing sessions for the taking of additional evidence or for other purposes, upon the administrative law judge's own finding that the record is incomplete or fails to provide the basis for an informed decision;

(14) to amend the complaint to conform to the proof.
(g) Investigation file. The regional investigation file, which is also available to the parties, will be made available to the administrative law judge at least 30 days prior to the preliminary conference pursuant to subsection (h) of this section.

(h) Preliminary conference. The first session of the hearing, for which the parties receive notice pursuant to rule 465.9, shall begin with a preliminary conference before the administrative law judge. The conduct of this preliminary conference shall be as follows:
(1) All legal and factual issues of the case which relate to the conduct of the hearing or the presentation of the evidence will be discussed, and the parties, by their advocates, shall be prepared to address these issues.
(2) Parties shall bring to the preliminary conference all documentary evidence in their control which is to be offered in evidence. Items already present in the investigatory file need not be separately produced. The administrative law judge will determine what documents are necessary to complete the record. Documents shall be assembled and placed in the record at this time through notation by the administrative law judge.
(3) Parties will provide a list of proposed witnesses, with explanation of their identity and the scope of their knowledge of the facts of the case. The administrative law judge will determine the witnesses necessary to complete the record.
(4) The administrative law judge may, at his discretion or at the suggestion of a party, request the production of additional documents and/or additional witnesses, and may agree to the issuance of subpoenas, as necessary.
(5) The administrative law judge may, at the preliminary conference or at a later time, propose possible stipulations of fact, or issue to the parties interim or tentative findings of fact, and/or issue to the parties questions for hearing, and may take any other steps necessary to limit and frame the issues to be addressed in the hearing.
(6) The administrative law judge shall establish a schedule for the presentation of testimony, and shall, to the extent practical, resolve all issues relating to the conduct of the hearing and the presentation of the evidence.
(7) The record of the preliminary conference will be kept in the form of the administrative law judge's formal notes.

(i) Hearing record. The record of the hearing may be taken by shorthand reporting, tape recording, or other reasonable method. The method chosen shall be within the discretion and direction of the chief administrative law judge. At all hearing sessions, the administrative law judge shall take formal notes listing all matters made part of the record, which shall be attached as an appendix to the recommended order.

(j) Public hearings. Hearings shall be open to the public, except in extraordinary circumstances. Oral testimony shall not be taken in camera. The administrative law judge may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct at the hearing, except a party to the proceeding, an attorney of record, or a witness engaged in testifying. The hearing shall be conducted with dignity and respect.

(k) Trade secrets and privacy. Where desirable, the administrative law judge in consultation with counsel may provide for the use of devices such as deletion of names and coding in order to protect personal privacy or information, including trade secrets which, if made public, would result in unfair advantage to competitors. In extraordinary circumstances, the administrative law judge shall have the discretion to close the hearing to the public to protect the rights of the parties. (l) Ex parte communications. No person shall communicate with the administrative law judge subsequent to the commencement of a hearing on any matter relating to the case, other than a status inquiry, unless a copy of such communication is sent to all parties to the proceeding. If such a communication is made in violation of this rule, a copy of the communication, or a written summary if the communication was oral, shall be sent to all the parties by the administrative law judge.

(m) Settlements.
(1) Where the parties agree to a settlement during the course of the hearing, the procedures set forth in Rule 465.16 shall apply.
(2) The proposed settlement shall contain terms as set forth in Rule 465.16(b).
(3) Where voluntary settlement is not reached, offers of settlement by respondent shall be reviewed by the administrative law judge to determine whether such settlement offer is substantial enough to require an order, in the public interest, terminating the proceeding. The following criteria are among those which should be considered:
i. probability of success after full hearing;
ii. reasonableness of offer;
iii. reasonableness of complainant's refusal, if any;
iv. the amount of the complainant's economic loss, and respondent's degree of responsibility therefor;
v. in appropriate cases, the evidence of the amount of complainant's mental pain and suffering;
vi. the egregiousness of the discrimination charged;
vii. whether the public interest is best served by the continuation of the proceedings.
(4) Objections by a complainant to a proposed settlement shall be oral or written, at the discretion and direction of the administrative law judge, who shall set a time frame for the submission of the objections. The objections shall be specific and in detail.
(5) Where the administrative law judge finds the terms of the proposed settlement to be in the public interest, and that the complainant's objections to the proposed settlement are without substance, he or she may, upon request of respondent, issue a recommended equitable order for the commissioner's consideration, providing that the respondent will pay the complainant the amount proposed in the settlement and dismissing the complaint on the merits.
(n) Deaf persons. Whenever any deaf person is a party to a hearing, or a witness therein, the division shall appoint a qualified interpreter who is certified by a recognized national or New York state credentialing authority to interpret the proceedings to, and the testimony of, such deaf person.

(o) Oral arguments and briefs. The administrative law judge may permit the parties or their attorneys, the division attorney and interveners and interested organizations to argue orally within such time limits as the administrative law judge may determine. Trial briefs will only be permitted where specifically requested by the administrative law judge, on particular points of

law. Any such brief shall be filed in duplicate with the administrative law judge, with proof of service upon all counsel in the proceeding and parties appearing without counsel. Full written arguments will be permitted in the form of objections as provided for in Rule 465.15(c).

(p) Continuations, adjournments and substitutions of administrative law judge. The division may postpone a scheduled hearing, or continue a hearing from day to day or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by appropriate notice to all parties. No adjournment of a scheduled hearing shall be granted except upon affidavit of actual engagement before a higher tribunal or for good cause shown in writing. The chief administrative law judge may review and change the adjourned dates.

(q) Time frames for recommended orders. The chief administrative law judge shall establish time frames for writing of recommended orders by the administrative law judge who conducts the hearing. The administrative law judge shall adhere strictly to such time frames.

465.13 Representation by an attorney.

(a) Appearance. If any party designates an attorney-at-law to represent that party before the division, such attorney shall file a notice of appearance with the division. An attorney-at-law who appears for a party to the proceeding at any stage therein, including an application for an injunction, shall be deemed to remain that party's attorney throughout the proceeding until:
(1) the party represented files with the division a written revocation of the attorney's authority; or
(2) the attorney files with the division a written statement of withdrawal from the case; or
(3) the attorney states on the record at a division hearing that the attorney is withdrawing from the case; or
(4) the party represented states on the record at a division hearing that the attorney's authority is revoked; or
(5) the division receives notice of the attorney's death or disqualification; or
(6) an adverse ruling is made on a motion to disqualify an attorney because of conflict of interest.

(b) Notice to attorneys. Copies of all written communications or notices in the matter directed to the party shall be sent either to the attorney alone or to both the party and the attorney.

(c) Effectiveness of service. Service of any document or paper (except subpoenas and subpoenas duces tecum) in the matter on such attorney shall be deemed service on the party represented; provided, however, that the division may, in addition, serve any document or paper on the party such attorney represents.

(d) Who shall present case in support of complaint.
(1) If the complainant is not represented by an attorney, the case in support of the complaint shall be presented before the administrative law judge by the division's agent or attorney. However, such agent or attorney shall not have an attorney-client relationship with the complainant.
(2) If the complainant is represented by an attorney, such attorney shall solely present the case in support of the complaint on the consent of the division attorney. The division attorney shall

prepare and submit to the administrative law judge or chief administrative law judge a statement in lieu of appearance together with the jurisdictional papers.

(e) The complainant's and respondent's attorneys shall have full and complete access to the file, and to copies (at reasonable cost) of documents necessary to the hearing, at an office maintained by the division convenient to such attorney, by appointment.

(f) The complainant's and respondent's attorneys shall consult with the division attorney, or with the administrative law judge at the hearing, concerning any proposed settlement of the case, for the purpose of preserving the public interest.

(g) The administrative law judge may, in the exercise of discretion, request the appearance of the division attorney. (h) Public interest or legal questions.
(1) Where the division attorney determines that there exists a substantial public interest or an important or novel issue of law, the division shall appear at the hearing.
(2) In such case, the division attorney and complainant's attorney may agree on the procedure to be followed in the presentation of the case, including joint presentation by such attorneys.
(3) The division attorney may at any time withdraw the consent to have the case presented solely by the complainant's attorney, and appear at the hearing or submit arguments or briefs.

(i) Payment of award. When an attorney has ceased to represent a complainant, the division shall have no obligation to notify said attorney of any award of money to a complainant by way of conciliation, settlement, order after hearing or otherwise, and may consent to or order the delivery and payment of the award by the respondent to the complainant. When a complainant is represented by an attorney at the time of an award, the terms of payment thereof shall provide that said award shall be paid in the form of a check or draft made payable to the complainant but delivered to the complainant's attorney.

465.14 Subpoenas and subpoenas duces tecum.

(a) Who may issue.
(1) The commissioner, an administrative law judge, the division attorney, or other officer or employee of the division designated for this purpose by the commissioner, may issue subpoenas requiring a witness to appear and give sworn testimony henever necessary to compel attendance.
(2) The commissioner, an administrative law judge, the division attorney, the deputy commissioner for regional affairs, regional director, or other officer or employee of the division designated for this purpose by the commissioner, may issue subpoenas duces tecum to require the production for examination of any books, payrolls, personnel records, correspondence, documents, papers or any other evidence relating to any matter under investigation or in question before the division.

(b) When and where returnable. Subpoenas duces tecum, issued by the designated division officers and employees, may be made returnable at any stage of any investigation or proceeding pending before the division. Documents, books and records required for a public hearing before

an administrative law judge may be subpoenaed and made returnable prior to such hearing at such time and place stated in the subpoena by the issuing officer, or made returnable before the designated division depository officer. Witness subpoenas shall be returnable only at public hearing.

(c) Application for a subpoena. Subpoenas and subpoena duces tecum may be issued by the designated division officers and employees upon the application of a party or a party's attorney.
(d) Subpoenas by attorneys. An attorney appearing for a party may issue subpoenas or subpoenas duces tecum returnable at a hearing before an administrative law judge. Subpoenas for the production of documents, books and records required for a public hearing before an administrative law judge may be made returnable prior to such hearing before the duly designated division depository officer, who shall hold the material produced pursuant to the subpoena for the administrative law judge.

(e) Depository officer. An officer or employee of the division's office of general counsel may be designated as a depository officer, who shall receive and hold documents, books and records subpoenaed prior to a public hearing or produced at said hearing and required for use during the period between the commencement of a public hearing and any adjourned date thereof. Such records shall be made available for inspection and copying during the ordinary business hours of the division, by appointment, and in accordance with section 2305(c) of the Civil Practice Law and Rules of New York State.

(f) Public bodies. A subpoena duces tecum directed to a public body or agency does not require approval of a court.

(g) Witness or mileage fees. Where a subpoena or subpoena duces tecum is issued at the instance of a party, or by an attorney, the cost of service and witness and mileage fees and the burden of service shall be borne by such party or attorney. Such witness and mileage fees shall be the same as are paid at trials in the New York State Supreme Court.

465.15 Division initiated settlements.

(a) The general counsel, or his or her designee may, at any time after a finding of probable cause, endeavor to achieve settlement of a case by proposing a settlement to the respondent which, if agreed to by respondent, will be proposed to complainant, who must agree to such settlement proposal or reject it for sufficient reasons stated in objections. If the proposed settlement is agreed to by respondent and rejected by complainant without sufficient reasons, the case will be dismissed for administrative convenience or an equitable order will be recommended.

(b) The general counsel may, in his or her discretion, determine that a case is appropriate for a division initiated settlement. He or she shall set a settlement value for the case in the form of a lump sum dollar amount, or by such other formula as may be appropriate, and shall formulate such other terms as would provide an appropriate resolution of the case. The settlement value

may be the same as an offer of settlement previously made by a party and rejected by the opposing party.

(c) After the settlement has been formulated, a letter setting forth all the proposed terms of the division initiated settlement will be sent to the respondent, along with such other information as is necessary to explain the division initiated settlement process. Respondent shall have a specified time in which to indicate whether respondent will agree to such settlement.

(d) If the respondent agrees to the terms of the division initiated settlement, then the settlement terms, and an explanation of the division initiated settlement process shall be sent to the complainant. The complainant shall have a stated time period in which to agree to the settlement or submit written objections thereto. The objections shall be specific and in detail.

(e) After consideration of complainant's objections, the general counsel shall either accept the objections and refer the case on for hearing, or shall reject the objections and provide complainant with an additional period of time to accept the settlement.

(f) If the complainant does not agree to a settlement within the allotted time, and the complainant's objections are not accepted by the general counsel, then the case may be dismissed for administrative convenience, or upon request of the respondent, the general counsel may issue a recommended equitable order, for the commissioner's consideration, providing that the respondent will pay the complainant the amount proposed in the settlement and dismissing the complaint on the merits.

(g) In determining the settlement value of the case, and the other terms of settlement to be proposed, and in evaluating the reasonableness of a complainant's objections, the general counsel shall consider, among other things, the following
(1) the probability of success after hearing;
(2) the amount of complainant's economic loss, and respondent's degree of responsibility therefor;
(3) in appropriate cases, the evidence of the amount of complainant's mental pain and suffering;
(4) the egregiousness of the discrimination charged;
(5) whether the public interest requires the continuation of the proceedings.

(h) The proposed division initiated settlement shall contain terms as set forth in Rule 465.16(b).

(i) A successful division initiated settlement shall be confirmed by an order of the commissioner, as set forth in Rule 465.16(c).

(j) The general counsel, or any other division representative, shall not disclose what has transpired in the course of attempts at division initiated settlement, except to the parties and their representatives, and except that
(1) in those cases where the division initiated settlement attempt results in a dismissal for administrative convenience, the dismissal shall contain a recital of the proposed settlement, and the reasons that the complainant's objections to it were rejected.

(2) in those cases that result in an order of the commissioner, the terms of the settlement may be disclosed as with any final order of the division.

465.16 Settlements.

(a) Stipulation. At any time after a determination of probable cause, the parties may stipulate to settle the case subject to the approval of the commissioner. Such stipulation shall either be in writing, signed by the parties or their attorneys, or be placed on the record at a public hearing.

(b) Terms.
(1) The stipulation should contain precise and unambiguous terms.
(2) The stipulation should include an agreement by the respondent to refrain or cease and desist from the commission of unlawful discriminatory practices in the future.
(3) The stipulation may include as escrow arrangement for the payment of any monies due thereunder.
(4) The stipulation should provide for the issuance of an order thereon by the commissioner, incorporating its operative terms.

(c) Order after stipulation.
(1) An order after stipulation may be signed and issued by the commissioner without a hearing and without finding of fact.
(2) Such order by be enforced in court in the same manner as any order issued by the commissioner.

465.17 Orders after hearing.

(a) Form. An order issued after hearing shall set forth the findings of fact of the commissioner, the determination and, in discretion of the commissioner, an opinion containing the reasons for the decision.

(b) Content. An order after hearing shall conform to the requirements set forth in section 297.4(c) of the New York State Human Rights Law, and may include a directive for the payment of interest on any money awarded.

(c) Preparation and order.
(1) After all testimony is taken and briefs, if any, are submitted, the administrative law judge shall prepare a proposed order for the commissioner containing findings of fact and a decision, and a copy of said proposed order shall be served on all parties. Objections to the proposed order shall be in writing and be filed in the commissioner's office within 21 days after service of the proposed order. When objections are so filed, the hearing shall be deemed to be completed at the time of such filing.
(2) When the interests of justice so require, the adjudication counsel may issue order based on the record. If an alternative proposed order is under consideration by the commissioner, a copy

of said alternative proposed order shall be served on all the parties. Objections to the alternative proposed order shall be in writing, and be filed in the commissioner's office within 21 days after service of the alternative proposed order.
(3) The parties shall have no ex parte contact with the commissioner. The commissioner shall not decide any case if any party has had ex parte contact with him or her within the context of the case at bar. If, for this or any other reason, the commissioner recuses him or herself or otherwise delegates this function, the executive deputy commissioner, adjudication counsel, or chief administrative law judge of the division will be designated by the commissioner as the person who is fully empowered to decide such case.

(d) Service. Copies of orders signed by the commissioner shall be sent to the complainant, respondent and all parties, including interveners and their attorneys. A copy of the order shall be delivered in all cases to the Attorney General, the Secretary of State if he has issued a license to the respondent, and such other public officers as the division deems proper.

(e) Filing. Copies of all orders rendered after a hearing shall be filed at the administrative offices of the division, and at the office where the complaint was filed. Such orders shall be open to public inspection during regular office hours of the division

465.18 Compliance investigation.

(a) Investigation. Not later than one year from the date of a conciliation agreement, an order after hearing or an order after stipulation, and at any other times in its discretion, the division shall investigate whether the respondent is complying with the terms of such agreement or order.

(b) Action. Upon a finding of noncompliance, the division shall take appropriate action to assure compliance.

465.19 Action to assure compliance by nonresident respondent.

(a) Hearing. If the division, in the course of a compliance investigation or otherwise, receives credible information indicating noncompliance with a cease and desist order issued against a respondent nonresident individual or respondent foreign corporation by virtue of section 298-a of the New York State Human Rights Law, the division shall serve upon such respondent a notice summarizing such information and directing such respondent to appear at a hearing and show cause why such respondent should not be prohibited from transacting any business within this State. The notice shall set forth the time and place of the hearing. Such respondent may appear at the hearing, in person or by counsel, and cross-examine witnesses and submit oral testimony and other evidence. Subdivisions (c) through (l) of section 465.12 of this Part and sections 465.13 through 465.15 of this Part shall apply in such cases.

(b) Prohibition order. If, after a hearing held as provided in subdivision (a) of this section, the commissioner finds that such respondent has failed to comply with the cease and desist order, the

division, acting by the commissioner, shall issue an order prohibiting such respondent from transacting any business within this State. Such prohibition order shall be subject to judicial review in the manner prescribed by article 78 of the Civil Practice Law and Rules of the State of New York.

(c) Vacating prohibition order. Any prohibition order issued pursuant to subdivision (b) of this section may be vacated by the division upon application made under section 465.20 of this Part, upon satisfactory proof of compliance with the underlying cease and desist order.

(d) Violation a misdemeanor. Any information indicating that a respondent has violated a prohibition order issued pursuant to subdivision (b) of this section shall be referred to the district attorney of the county where the violation occurred. Subdivision 3 of section 298-a of the New York State Human Rights Law makes such violation a class A misdemeanor.

465.20 Reopening of proceedings by commissioner.

(a) Reopening on commissioner's own motion.
(1) The commissioner, or any designee of the commissioner, including those specifically referred to in these rules, may, on his or her own motion, whenever justice so requires, reopen a proceeding, determination or record, and take such action as may be deemed necessary.
(2) No case shall be reopened where an appeal has been taken to court from an order dismissing a case for lack of probable cause or lack of jurisdiction. However, the division may request the court to remand such a case for good cause.

(b) Reopening a probable cause determination on application of respondent.
(1) The commissioner, or any designee of the commissioner, may, on written application of a respondent, made within 60 days after the division issues a determination of probable cause, whenever justice so requires, reopen a proceeding and take such action as may be deemed necessary. The general counsel shall be the designee of the commissioner for the purposes of this subdivision.
(2) Respondent's application must be served on all parties. Complainant will be given an opportunity to submit a response to the application. No additional submissions from the parties will accepted prior to the determination of the reopening application.

(c) Time to appeal expired. Where a complaint has been dismissed after investigation for lack of probable cause or lack of jurisdiction, the time to appeal to court has expired, and less than one year has passed since the dismissal, reopening may be predicated only upon:
(1) actions occurring subsequent to the investigation; or
(2) an allegation of newly discovered evidence of wrongdoing, fraud or irregularity which the applicant could not, with due diligence, have discovered before the dismissal of the complaint.

(d) Withdrawn complaints. Where a complaint has been withdrawn, it may not be reopened except upon an allegation that the withdrawal was induced by fraud or coercion, or error, contained in a written application for such reopening made to the division within one year after

the issuance by the division of a notice that said complaint has been withdrawn, or within one year from the effective date hereof. Nothing herein contained shall be construed to limit the complainant's right to refile a withdrawn complaint no later than one year after the alleged discriminatory practice.

465.21 Availability of rules.

The rules of the division shall be available to the public at all offices of the division.

465.22 Construction of rules.

This Part shall be liberally construed to accomplish the purposes of the New York State Human Rights Law and the policies of the division.