

NEW JERSEY DIVISION ON CIVIL RIGHTS

WITNESS INTERVIEW POLICY

When a complaint is filed with the New Jersey Division on Civil Rights (DCR) alleging a violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, or New Jersey Family Leave Act (FLA), N.J.S.A. 34-11:B-1 to -16, DCR is charged with conducting a neutral investigation to determine whether there is probable cause to support the allegations of the complaint. N.J.S.A. 10:5-14. Those investigations may require DCR to interview fact witnesses to obtain information necessary to ascertain “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. denied, 498 U.S. 1073 (1991).

There is no right to have counsel present during investigative interviews. See, e.g. In re Comprehensive Investigation of the Sch. Dist., 276 N.J. Super. 354, 359 (App. Div. 1994). This prohibition is in place because the presence of a party’s attorney during an administrative investigation can have a chilling effect on the testimony of non-party fact witnesses. See In re Groban, 352 U.S. 330, 334 (1957).

DCR may, as a courtesy, permit a party to a complaint to have its own counsel present for an interview of that party. Accordingly, a complainant or respondent who is an individual may be permitted to have his or her counsel present at an interview of that individual party. If a party is a corporation, partnership or other business entity or organization, DCR may allow that party’s counsel to be present for an interview of a member of its “litigation control group,” i.e., “current agents and employees responsible for, or significantly involved in, the determination of the organization’s legal position in the matter.” NJ Rules of Professional Conduct 1.13(a). However, because an attorney representing a corporation, partnership or other business entity or organization does not represent all of the organization’s “directors, officers, employees, members, shareholders or other constituents,” DCR generally prohibits a respondent organization’s counsel from attending the interview of a non-party witness regardless of the whether that witness is a current or former employee of the respondent. Ibid.

As a courtesy, DCR may also permit a non-party fact witness to have his or her own attorney present when being interviewed by DCR. An attorney, law firm or legal department representing an employer cannot also represent a current or former employee who is not part of the employer’s litigation control group, as this would present a conflict of interest for DCR’s investigation. The witness cannot waive this type of conflict. The consideration at stake is the integrity of DCR’s investigation and the State’s compelling interest in having witnesses in DCR investigations speak freely and truthfully. That interest would be jeopardized by multiple representation. See Greer v. New Jersey Bureau of Securities, 291 N.J. Super. 365, 373 (App. Div. 1994) (upholding agency practice prohibiting multiple representations of witnesses by counsel during an administrative investigation.)

DCR will not permit an attorney to obstruct, guide, or in any way interfere with the investigative process. Requests for counsel to be present at interviews are evaluated on a case-by-case basis, and should be submitted in writing to DCR Assistant Director Estelle Bronstein. Questions regarding this policy should be addressed to Estelle Bronstein at estelle.bronstein@njcivilrights.gov or (609) 292-4605.