

**Conducting Family Part
Discovery**

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PERTINENT RULES OF COURT CONCERNING DISCOVERY

R. 4:14-7 Subpoena for Taking Depositions

(a) Form; Contents; Scope. The attendance of a witness at the taking of depositions may be compelled by subpoena, issued and served as prescribed by R. 1:9 insofar as applicable, and subject to the protective provisions of R. 1:9-2 and R. 4:10-3. The subpoena may command the person to whom it is directed to produce designated books, papers, documents or other objects which constitute or contain evidence relating to all matters within the scope of examination permitted by R. 4:10-2.

(b) Time and Place of Examination by Subpoena; Witness' Expenses.

(1) Fact Witnesses. A resident of this State subpoenaed for the taking of a deposition may be required to attend an examination

only at a reasonably convenient time and only in the county of this State in which he or she resides, is employed or transacts business in person, or at such other convenient place fixed by court order. A nonresident of this State subpoenaed within this State may be required to attend only at a reasonably convenient time and only in the county in which he or she is served, at a place within this State not more than 40 miles from the place of service, or at such other convenient place fixed by court order. The party subpoenaing a witness, other than one subject to deposition on notice, shall reimburse the witness for the out-of-pocket expenses and loss of pay, if any, incurred in attending at the taking of depositions.

(2) *Expert Witnesses and Treating Physicians.* If the expert or treating physician resides or works in New Jersey, but the deposition is taken at a place other than the witness' residence or place of business, the party taking the deposition shall pay for the witness' travel time and expenses, unless otherwise ordered by the court. If the expert or treating physician does not reside or work in New Jersey, the proponent of the witness shall either (A) produce the witness, at the proponent's expense, in the county in which the action is pending or at such other place in New Jersey upon which all parties shall agree, or (B) pay all reasonable

travel and lodging expenses incurred by all parties in attending the witness' out-of-state deposition, unless otherwise ordered by the court.

(c) Notice; Limitations. A subpoena commanding a person to produce evidence for discovery purposes may be issued only to a person whose attendance at a designated time and place for the taking of a deposition is simultaneously compelled. The subpoena shall state that the subpoenaed evidence shall not be produced or released until the date specified for the taking of the deposition and that if the deponent is notified that a motion to quash the subpoena has been filed, the deponent shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by all parties to the action. The subpoena shall be simultaneously served no less than 10 days prior to the date therein scheduled on the witness and on all parties, who shall have the right at the taking of the deposition to inspect and copy the subpoenaed evidence produced. If evidence is produced by a subpoenaed witness who does not attend the taking of the deposition, the parties to whom the evidence is so furnished shall forthwith provide notice to all other parties of the receipt

thereof and of its specific nature and contents, and shall make it available to all other parties for inspection and copying.

R. 4:14-2 Notice of Examination; General Requirements;
Deposition of Organization

(a) Notice. Except as otherwise provided by R. 4:14-9(b), a party desiring to take the deposition of any person upon oral examination shall give not less than 10 days notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition, which shall be reasonably convenient for all parties, and the name and address of each person to be examined, if known, and, if the name is not known a general description sufficient to identify the person or the particular class or group to which the person belongs. If a defendant fails to appear or answer in any civil action within the time prescribed by these rules, depositions may be taken without notice to that defendant...

(d) Production of Things. The notice to a party deponent may be accompanied by a request made in compliance with and in accordance with the procedure stated in R. 4:18-1 for the

production of documents and tangible things at the taking of the deposition.

R. 4:18-1 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes; Pre-litigation Discovery

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on behalf of that party, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained and translated, if necessary, by the respondent through electronic devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of R. 4:10-2 and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of R. 4:10-2.

NOTE: GOOD LUCK FINDING ANY REPORTED NJ CASES ADDRESSING THE REQUIREMENTS OR DEFINITION OF "POSSESSION, CUSTODY OR CONTROL OF THE PARTY UPON WHOM THE REQUEST IS SERVED"

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. A copy of the request shall also be simultaneously served on all other parties to the action. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 35 days after the service of the request, except that a defendant may serve a response within 50 days after service of the summons and complaint upon that defendant. On motion, the court may allow a shorter or longer time. The written response, without documentation annexed but which shall be made available to all parties on request, shall be served by the party to whom the request was made upon all other parties to the action. The response shall state, with respect to each item or category,

that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request. The party submitting the request may move for an order of dismissal or suppression or an order to compel pursuant to R. 4:23-5 with respect to any objection to or other failure to respond to the request or any part thereof or any failure to permit inspection as requested. If a party who has furnished a written response to a request to produce or who has supplied documents in response to a request to produce thereafter obtains additional documents that are responsive to the request, an amended written response and production of such documents, as appropriate, shall be served promptly.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. Pre-

litigation discovery within the scope of this rule may also be
sought by petition pursuant to R. 4:11-1.