

## RULE 1:9. SUBPOENAS

### 1:9-1. For Attendance of Witnesses; Forms; Issuance; Notice in Lieu of Subpoena

A subpoena may be issued by the clerk of the court or by an attorney or party in the name of the clerk or as provided by R. R. 7:7-8 (subpoenas in certain cases in the municipal court). It shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. If the witness is to testify in a criminal action for the State or an indigent defendant, the subpoena shall so note, and shall contain an order to appear without the prepayment of any witness fee. The testimony of a party who could be subpoenaed may be compelled by a notice in lieu of subpoena served upon the party's attorney demanding that the attorney produce the client at trial. If the party is a corporation or other organization, the testimony of any person deposable on its behalf, under R. 4:14-2, may be compelled by like notice. The notice shall be served in accordance with R. 1:5-2 at least 5 days before trial. The sanctions of R. 1:2-4 shall apply to a failure to respond to a notice in lieu of a subpoena.

Note: Source-R.R. 3:5-10(a)(b), 4:46-1, 6:3-7(a), 7:4-3 (second paragraph), 8:4-9(a)(b); caption and text amended November 27, 1974 to be effective April 1, 1975; amended July 13, 1994 to be effective September 1, 1994; amended January 5, 1998 to be effective February 1, 1998.

### 1:9-2. For Production of Documentary Evidence and Electronically Stored Information; Notice in Lieu of Subpoena

A subpoena or, in a civil action, a notice in lieu of subpoena as authorized by R. 1:9-1 may require production of books, papers, documents, electronically stored information, or other objects designated therein. The court on motion made promptly may quash or modify the subpoena or notice if compliance would be unreasonable or oppressive and, in a civil action, may condition denial of the motion upon the advancement by the person in whose behalf the subpoena or notice is issued of the reasonable cost of producing the objects subpoenaed. The court may direct that the objects designated in the subpoena or notice be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys and, in matrimonial actions and juvenile proceedings, by a probation officer or other person designated by the court. Except for pretrial production directed by the court pursuant to this rule, subpoenas for pretrial production shall comply with the requirements of R. 4:14-7(c).

Note: Source – R.R. 3:5-10(c), 4:46-2, 6:3-7(b), 7:4-3 (second paragraph), 8:4-9(c); amended November 27, 1974 to be effective April 1, 1975; amended June 29, 1990 to be effective September 4, 1990; caption and text amended July 27, 2006 to be effective September 1, 2006.

### 1:9-3. Service

A subpoena may be served by any person 18 or more years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named together with tender of the fee allowed by law, except that if the person is a witness in a criminal action for the State or an indigent defendant, the fee shall be paid before leaving the court at the conclusion of the trial by the sheriff or, in the municipal court, by the clerk thereof.

Note: Source-R.R. 3:5-10(b) (last sentence), 3:5-10(d), 4:46-3, 5:2-2, 6:3-7(c), 7:4-6(a) (last sentence), 8:4-9(d); amended July 13, 1994 to be effective September 1, 1994.

### 1:9-4. Place of Service

A subpoena requiring the attendance of a witness at a hearing in any court may be served at any place within the State of New Jersey.

Note: Source-R.R. 3:5-10(e), 6:3-7(d), 7:4-6(b), 8:4-9(e).

#### 1:9-5. Failure to Appear

Failure without adequate excuse to obey a subpoena served upon any person may be deemed a contempt of the court from which the subpoena issued.

Note: Source-R.R. 3:5-10(f), 6:3-7(e), 8:4-9(f); amended July 13, 1994 to be effective September 1, 1994.

#### 1:9-6. Enforcement of Subpoena of Public Officer or Agency

(a) Ex Parte Application for Compliance. Where by statute a public officer or agency may apply ex parte to the court to compel a person to testify or to produce or file books, papers, documents or other objects in accordance with the subpoena or direction of the officer or agency, or to refrain from certain misconduct, the application may be made by motion supported by affidavit. The court may order the person to appear before the officer or agency and there to proceed as may be directed in the order.

(b) Application for Compliance on Notice. If in such a case the statute does not provide for an application ex parte, an order to show cause may issue on the motion and supporting affidavit. The order shall be made returnable in not less than 2 nor more than 10 days, requiring such person to show cause before the court why the subpoena or other direction should not be complied with or such misconduct refrained from, and upon the return of the order the court shall afford the person an opportunity to be heard under oath. The court may order a person determined by it to have failed, without justification, to obey the subpoena or other direction, answer a proper question, produce any such thing, or to have been guilty of misconduct, to appear before the officer or agency at a time or times and place mentioned in the order and there to proceed as may be directed in the order.

(c) Application for Sanctions. Where a statute provides that failure of a person to obey a subpoena or order of a public officer or administrative agency or a receiver, to testify, to answer a proper question, or to produce books, papers, documents or other objects, or that misconduct on the part of a person attending a hearing, shall be punishable by the court in the same manner as like failure or misconduct is punishable in an action pending in the court, the matter shall be brought before the court by motion supported by affidavit stating the circumstances. Upon the motion the court may issue an order to show cause, returnable in not less than 2 nor more than 10 days, requiring the person to show cause before the court why punishment should not be ordered; or the court may issue an attachment. If the court determines that the failure or misconduct above mentioned was without justification, it may punish as for a contempt of court.

Note: Source-R.R. 4:46-5(a)(b)(c); paragraphs (b) and (c) amended July 13, 1994 to be effective September 1, 1994.

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## RULE 4:5B. CASE MANAGEMENT; CONFERENCES

### 4:5B-1. Assignment for Case Management

At the time the complaint is filed, the action shall be assigned to a designated judge, who shall, except as otherwise provided by R. 4:24-1(c), preside over all pretrial motions and management conferences in the cause until completion of discovery as provided by R. 4:36-2. Any application made to the court thereafter shall be made to the Civil Presiding Judge or designee. In Track IV and general equity cases, however, the designated managing judge shall, insofar as is practicable and absent exceptional circumstances, also preside at trial.

Note: Adopted July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended July 28, 2004 to be effective September 1, 2004.

### 4:5B-2. Case Management Conferences

In cases assigned to Tracks I, II, and III, the designated pretrial judge may *sua sponte* or on a party's request conduct a case management conference if it appears that such a conference will assist discovery, narrow or define the issues to be tried, address issues relating to discovery of electronically stored information, or otherwise promote the orderly and expeditious progress of the case. A case management conference shall not, however, ordinarily be conducted after the case is ready for trial. In Track IV cases, except for actions in lieu of prerogative writs and probate and general equity actions, an initial case management conference shall be conducted as soon as practicable after joinder and, absent exceptional circumstances, within 60 days thereafter. In actions in lieu of prerogative writs, case management conferences shall be held pursuant to R. 4:69-4. In probate actions, case management conferences may be scheduled at the discretion of the judge. In all actions in general equity, except summary actions pursuant to R. 4:67 and foreclosure actions, an initial case management conference shall be held within 30 days following the filing of the answers of all defendants initially joined, and the court may hold such additional case management conferences as it deems appropriate. All decisions and directives issued at a case management conference shall be memorialized by order as required by R. 1:2-6. The order may include provisions for disclosure of discovery of electronically stored information and any agreements the parties reach for asserting claims of privilege or protection as trial preparation material after production.

Note: Adopted July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004; amended July 27, 2006 to be effective September 1, 2006.

### 4:5B-3. Settlement Conferences

The court may conduct a settlement conference or schedule any other settlement event in any civil action on its or a party's request. Except in Track IV cases, there shall be no more than one court-initiated or court-mandated settlement conference or other settlement event prior to the trial date. Notwithstanding the conduct of a settlement conference or other settlement event as herein provided, a second settlement conference may be conducted on the trial date and immediately prior to the commencement of trial, provided that trial shall then forthwith proceed if settlement is not reached. The settlement conference need not be conducted by the designated pretrial judge.

Note: Adopted July 5, 2000 to be effective September 5, 2000.

[ 4:5B-4. Applicability ] [Deleted]

Note: Adopted July 5, 2000 to be effective September 5, 2000; rule deleted July 27, 2006 to be effective September 1, 2006.

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## RULE 4:10. PRETRIAL DISCOVERY

### 4:10-1. Discovery Methods

Except as otherwise provided by R. 5:5-1 (discovery in family actions), parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. Unless the court orders otherwise under R. 4:10-3, the frequency of use of these methods is not limited.

Note: Former rule deleted (see R. 4:14-1) and new R. 4:10-1 adopted July 14, 1972 to be effective September 5, 1972; amended December 20, 1983 to be effective December 31, 1983.

### 4:10-2. Scope of Discovery; Treating Physician

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(a) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; nor is it ground for objection that the examining party has knowledge of the matters as to which discovery is sought.

(b) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(c) Trial Preparation; Materials. Subject to the provisions of R. 4:10-2(d), a party may obtain discovery of documents, electronically stored information, and tangible things otherwise discoverable under R. 4:10-2(a) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of R. 4:23-1(c) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Trial Preparation; Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of R. 4:10-2(a) and acquired or developed in anticipation of litigation or for trial, may be obtained only

as follows:

(1) A party may through interrogatories require any other party to disclose the names and addresses of each person whom the other party expects to call at trial as an expert witness, including a treating physician who is expected to testify and, whether or not expected to testify, of an expert who has conducted an examination pursuant to R. 4:19 or to whom a party making a claim for personal injury has voluntarily submitted for examination without court order. The interrogatories may also require, as provided by R. 4:17-4(a), the furnishing of a copy of that person's report. Discovery of communications between an attorney and any expert retained or specially employed by that attorney occurring before service of an expert's report is limited to facts and data considered by the expert in rendering the report. Except as otherwise expressly provided by R. 4:17-4(e), all other communications between counsel and the expert constituting the collaborative process in preparation of the report, including all preliminary or draft reports produced during this process, shall be deemed trial preparation materials discoverable only as provided in paragraph (c) of this rule.

(2) Unless the court otherwise orders, an expert whose report is required to be furnished pursuant to subparagraph (1) may be deposed as to the opinion stated therein at a time and place as provided by R. 4:14-7(b)(2). Unless otherwise ordered by the court, the party taking the deposition shall pay the expert or treating physician a reasonable fee for the appearance, to be determined by the court if the parties and the expert or treating physician cannot agree on the amount therefor. The fee for the witness's preparation for the deposition shall, however, be paid by the proponent of the witness, unless otherwise ordered by the court.

(3) A party may discover facts known or opinions held by an expert (other than an expert who has conducted an examination pursuant to R. 4:19) who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances under which it is impractical for the party seeking discovery to obtain facts or opinions on the same subject by other means. If the court permits such discovery, it shall require the payment of the expert's fee provided for by R. 4:10-2(d)(2), and unless manifest injustice would result, the payment by the party seeking discovery to the other party of a fair portion of the fees and expenses which had been reasonably incurred by the party retaining the expert in obtaining facts and opinions from that expert.

(4) A party shall not seek a voluntary interview with another party's treating physician unless that party has authorized the physician, in the form set forth in Appendix XII-C, to disclose protected medical information.

(e) Claims of Privilege or Protection of Trial Preparation Materials.

(1) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(2) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable efforts to retrieve it. The producing party must preserve the information until the claim is resolved.

(f) Claims that Electronically Stored Information is not Reasonably Accessible. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery or for a protective order, the party from whom discovery is sought shall demonstrate that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court nevertheless may order discovery from such sources if the requesting party establishes good cause, considering the limitations of R. 4:10-2(g). The court may specify conditions for the discovery.

(g) Limitation on Frequency of Discovery. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (3) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act pursuant to a motion or on its own initiative after reasonable notice to the parties.

Note: Source – R.R. 4:16-2, 4:23-1, 4:23-9, 5:5-1(f). Amended July 14, 1972 to be effective September 5, 1972 (paragraphs (d)(1) and (2) formerly in R. 4:17-1); paragraph (d)(2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (c) and (d)(1) and (3) amended July 13, 1994 to be effective September 1, 1994; paragraph (d)(1) amended June 28, 1996 to be effective September 1, 1996; paragraph (e) adopted July 10, 1998 to be effective September 1, 1998; paragraph (d)(1) amended July 12, 2002 to be effective September 3, 2002; corrective amendments to paragraph (d)(1) adopted September 9, 2002 to be effective immediately; caption amended, paragraphs (a), (c), and (e) amended, and new paragraphs (d)(4), (f), and (g) adopted July 27, 2006 to be effective September 1, 2006.

#### 4:10-3. Protective Orders

On motion by a party or by the person from whom discovery is sought, the court, for good cause shown or by stipulation of the parties, may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, but not limited to, one or more of the following:

- (a) That the discovery not be had;
- (b) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (d) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (e) That discovery be conducted with no one present except persons designated by the court;
- (f) That a deposition after being sealed be opened only by order of the court;
- (g) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (h) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of R. 4:23-1(c) apply to the award of expenses incurred in relation to the motion.

When a protective order has been entered pursuant to this rule, either by stipulation of the parties or after a finding of good cause, a non-party may, on a proper showing pursuant to R. 4:33-1 or R. 4:33-2, intervene for the purpose of challenging the protective order on the ground that there is no good cause for the continuation of the order or portions thereof. Neither vacation nor modification of the protective order, however, establishes a public right of access to unfiled discovery materials.

Note: Source – R.R. 4:20-2. Former rule deleted (see *R. 4:14-3(a)*) and new *R. 4:10-3* adopted July 14, 1972 to be effective September 5, 1972 (formerly *R. 4:14-2*); paragraph (e) amended July 29, 1977 to be effective September 6, 1977; amended July 27, 2006 to be effective September 1, 2006 .

#### 4:10-4. Sequence and Timing of Discovery

Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not, of itself, operate to delay any other party's discovery.

Note: Former rule deleted (see *R. 4:16-1*) and new *R. 4:10-4* adopted July 14, 1972 to be effective September 5, 1972.

#### 4:10-5. Objections to Admissibility [Deleted]

Note: Source-R.R. 4:16-5. Deleted July 14, 1972 to be effective September 5, 1972.

#### 4:10-6. Effect of Taking or Using Depositions [Deleted]

Note: Source-R.R. 4:16-6. Deleted July 14, 1972 to be effective September 5, 1972.

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## RULE 4:17. INTERROGATORIES TO PARTIES

### 4:17-1. Service, Scope of Interrogatories

(a) Generally. Any party may serve upon any other party written interrogatories relating to any matters which may be inquired into under R. 4:10-2. The interrogatories may include a request, at the propounder's expense, for a copy of any paper.

(b) Uniform Interrogatories in Certain Actions.

(1) Limitations on Interrogatories. In all actions seeking recovery for property damage to automobiles and in all personal injury cases other than wrongful death, toxic torts, cases involving issues of professional malpractice other than medical malpractice, and those products liability cases either involving pharmaceuticals or giving rise to a toxic tort claim, the parties shall be limited to the interrogatories prescribed by Forms A, B and C of Appendix II, as appropriate, provided, however, that each party may propound ten supplemental questions, without subparts, without leave of court. Any additional interrogatories shall be permitted only by the court in its discretion on motion.

(2) Automatic Service of Uniform Interrogatories. A party defendant served with a complaint in an action subject to uniform interrogatories as prescribed by subparagraph b(1) of this rule shall be deemed to have been simultaneously served with such interrogatories. The defendant shall serve answers to the appropriate uniform interrogatories within 60 days after service by that defendant of the answer to the complaint. The plaintiff in such an action shall be deemed to have been served with uniform interrogatories simultaneously with service of defendant's answer to the complaint and shall serve answers to the interrogatories within 30 days after service of the answer to the complaint. In all actions commenced prior to September 5, 2000, however, answers to uniform interrogatories shall be demanded by letter of demand served upon all adverse parties within the time prescribed by R. 4:17-2, and answers shall be served within the time prescribed by R. 4:17-4(b).

(3) Claims of Privilege, Protection. Privileged information need not be disclosed provided the claim of privilege is made pursuant to R. 4:10-2(e). Nor need information be disclosed if it is the subject of an identified protective order issued pursuant to R. 4:10-3.

(4) Obligation to Answer Every Question. Except as otherwise provided in subparagraph (b)(3) of this rule, every question propounded by a uniform interrogatory must be answered unless the court has otherwise ordered.

Note: Source-R.R. 4:23-1, 4:23-9. Last clause of second sentence and third and fourth sentences deleted (see R. 4:10B2 (d) and R. 4:17B3) July 14, 1972 to be effective September 5, 1972; new caption for paragraph (a) and new paragraphs (b)(i) and (ii) adopted July 13, 1994 to be effective September 1, 1994; paragraph (b)(i) amended and paragraph (b)(iii) added June 28, 1996 to be effective September 1, 1996; paragraph (b)(i) amended July 10, 1998 to be effective September 1, 1998; paragraphs (b)(i), (b)(ii), and (b)(iii) redesignated as paragraphs (b)(1),(b)(2), and (b)(3), redesignated paragraphs (b)(2) and (b)(3) amended, and new paragraph (b)(4) adopted July 5, 2000 to be effective September 5, 2000.

### 4:17-2. Time to Serve Interrogatories

Interrogatories may, without leave of court, be served upon the plaintiff or answers demanded pursuant to R. 4:17-1(b) after commencement of the action and served upon or demanded from any other party with or after service of the summons and complaint upon that party. Except as provided in R. 4:17-1(b)(2), initial interrogatories shall be served by plaintiff as to each defendant within 40 days after service of that defendant's answer and each defendant shall serve initial interrogatories within said 40-day period.

Note: Source-R.R. 4:23-2(a)(b)(c). Amended and last two sentences deleted July 14, 1972 to be effective September 5, 1972; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5,

2000.

#### 4:17-3. Number of Copies Served; Form of Interrogatories

The party serving the interrogatories shall furnish the answering party with the original thereof. The interrogatories shall be so arranged that after each separate question shall appear a blank space reasonably calculated to enable the answering party to have the answer typed in.

Note: Source-R.R. 4:23-3(a)(b). Amended July 14, 1972 to be effective September 5, 1972 (paragraph (a) formerly in R. 4:17-1); paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended June 29, 1990 to be effective September 4, 1990; introductory sentence added, paragraph (b) amended and paragraph (c) deleted July 13, 1994 to be effective September 1, 1994; paragraph (a) amended and paragraphs (a) and (b) combined June 28, 1996 to be effective September 1, 1996.

#### 4:17-4. Form, Service and Time of Answers

(a) Form of Answers; By Whom Answered. Except as otherwise provided in this rule, interrogatories shall be answered in writing under oath by the party upon whom served, if an individual, or, if a public or private corporation, a partnership or association, or governmental agency, by an officer or agent who shall furnish all information available to the party. If a party is unavailable, the interrogatories may be answered by an agent or authorized representative, including a liability carrier who is conducting the defense, whose answers shall bind the party. The party shall furnish all information available to the party and the party's agents, employees, and attorneys. The person answering the interrogatories shall designate which of such information is not within the answerer's personal knowledge and as to that information shall state the name and address of every person from whom it was received, or, if the source of the information is documentary, a full description including the location thereof. Each question shall be answered separately, fully and responsively either in the space following the question or on separate pages. Except as otherwise provided by paragraph (d) of this rule, if in any interrogatory a copy of a paper is requested, the copy shall be annexed to the answer. If the interrogatory requests the name of an expert or treating physician of the answering party or a copy of the expert's or treating physician's report, the party shall comply with the requirements of paragraph (e) of this rule.

(b) Service of Answers; Time; Enlargement of Time. Except as otherwise provided by R. 4:17-1(b)(2), the party served with interrogatories shall serve answers thereto upon the party propounding them within 60 days after being served with the interrogatories. For good cause shown the court may enlarge or shorten such time upon motion on notice made within the 60-day period. Consent orders enlarging the time are prohibited.

(c) Copies; Service by Propounding Party. The original of the answers shall be served upon the propounding party, who shall then serve a copy of the interrogatories and answers upon each of the other parties. Parties against whom default has been entered need not, however, be served, and parties represented by the same attorney need be served with one copy.

(d) Option to Produce Business Records. When the answer to an interrogatory may be derived or ascertained from or requires annexation of copies of the business records of the party on whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation abstract or summary based thereon, or from electronically stored information, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(e) Expert's or Treating Physician's Names and Reports. If an interrogatory requires a copy of the report of an expert witness or treating or examining physician as set forth in R. 4:10-2(d)(1), the answering party shall annex to the interrogatory an exact copy of the entire report or reports rendered by the expert or physician. The report shall contain a complete statement of that persons opinions and the basis therefor; the facts and data considered in forming the

opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and whether compensation has been or is to be paid for the report and testimony and, if so, the terms of the compensation. If the answer to an interrogatory requesting the name and report of the party's expert or treating physician indicates that the same will be supplied thereafter, the propounder may, on notice, move for an order of the court fixing a day certain for the furnishing of that information by the answering party. Such order may further provide that an expert or treating physician whose name or report is not so furnished shall not be permitted to testify at trial. Except as herein provided, the communications between counsel and expert deemed trial preparation materials pursuant to R. 4:10-2(d)(1) may not be inquired into.

Note: Source – R.R. 4:23-4, 4:23-5, 4:23-6(a)(b)(c)(d). Paragraph (a) amended and paragraph (d) adopted July 14, 1972 to be effective September 5, 1972; paragraph (a) amended September 13, 1976 to be effective September 13, 1976; paragraph (a) amended and paragraph (e) adopted July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 2, 1987 to be effective January 1, 1988; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a), (b) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (e) amended July 28, 2004 to be effective September 1, 2004; paragraph (d) amended July 27, 2006 to be effective September 1, 2006 .

#### 4:17-5. Objections to Interrogatories

(a) Objections to Questions; Motions. A party upon whom interrogatories are served who objects to any questions propounded therein may either answer the question by stating "The question is improper" or may, within 20 days after being served with the interrogatories, serve a notice of motion, to be brought on for hearing at the earliest possible time, to strike any question, setting out the grounds of objection. The answering party shall make timely answer, however, to all questions to which no objection is made. Interrogatories not stricken shall be answered within such unexpired period of the 60 days prescribed by R. 4:17-4(b) as remained when the notice of motion was served or within such time as the court directs. The propounder of a question answered by a statement that it is improper may, within 20 days after being served with the answers, serve a notice of motion to compel an answer to the question, and, if granted, the question shall be answered within such time as the court directs.

(b) Objections to Request for Copies of Papers. A party served with interrogatories requesting copies of papers who objects to the furnishing thereof shall, in lieu of complying with the request, either state with specificity the reasons for noncompliance or invite the propounder to inspect and copy the papers at a designated time and place. The propounder of a request for a copy of a paper which is not complied with, may, within 20 days after being served with the answers, serve a notice of motion directing compliance with the request or for other appropriate relief.

(c) Interrogatory Motions; Form. Motions to strike interrogatories or to compel more specific answers thereto shall include a short statement of the nature of the action and shall have annexed thereto the text of the questions and answers, if any, objected to.

(d) Costs and Fees on Motion. If the court finds that a motion made pursuant to this rule was made frivolously or for the purpose of delay or was necessitated by action of the adverse party that was frivolous or taken for the purpose of delay, the court may order the offending party to pay the amount of reasonable expenses, including attorney's fees, incurred by the other party in making or resisting the motion.

Note: Source-R.R. 4:23-8 (first, second, third, fourth and seventh sentences). Paragraph (c) adopted July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994.

#### 4:17-6. Limitation of Interrogatories

Except as otherwise provided by R. 4:17-1(b), the number of interrogatories or of sets of interrogatories to be served is not limited except as required to protect the party from annoyance, expense, embarrassment, or oppression. The party to whom interrogatories are propounded may apply for a protective order in accordance with R. 4:10-3.

Note: Source-R.R. 4:23-11. Amended and first sentence deleted (see R. 4:10-4) July 14, 1972 to be effective September 5, 1972; amended July 13, 1994 to be effective September 1, 1994.

#### 4:17-7. Amendment of Answers

Except as otherwise provided by R. 4:17-4(e), if a party who has furnished answers to interrogatories thereafter obtains information that renders such answers incomplete or inaccurate, amended answers shall be served not later than 20 days prior to the end of the discovery period, as fixed by the track assignment or subsequent order. Amendments may be allowed thereafter only if the party seeking to amend certifies therein that the information requiring the amendment was not reasonably available or discoverable by the exercise of due diligence prior to the discovery end date. In the absence of said certification, the late amendment shall be disregarded by the court and adverse parties. Any challenge to the certification of due diligence will be deemed waived unless brought by way of motion on notice filed and served within 20 days after service of the amendment. Objections made thereafter shall not be entertained by the court. All amendments to answers to interrogatories shall be binding on the party submitting them. A certification of the amendments shall be furnished promptly to any other party so requesting.

Note: Source -- R.R. 4:23-12; amended July 29, 1977 to be effective September 6, 1977; amended September 9, 1982 to be effective September 14, 1982; amended July 22, 1983 to be effective September 12, 1983; amended June 29, 1990 to be effective September 4, 1990; amended July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended July 28, 2004 to be effective September 1, 2004.

#### 4:17-8. Use, Filing and Effect of Interrogatories

(a) Use. Answers to interrogatories may be used to the same extent as provided by R. 4:16-1(a) and R. 4:16-1(b) for the use of the deposition of a party. If less than all of the interrogatories and answers thereto are marked or read into evidence by a party, an adverse party may read into evidence any other of the interrogatories and answers or parts thereof necessary for a fair understanding of the parts read into evidence. Interrogatories shall not be marked into evidence without good cause.

(b) Filing. Neither the interrogatories nor the answers shall be filed unless the court so directs at the pre-trial conference or trial.

(c) Pleading Not Stayed. The service of interrogatories shall not stay the time for service of an answering pleading.

Note: Source-R.R. 4:23-7, 4:23-10, 4:23-13. Paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (b) amended July 24, 1978 to be effective September 11, 1978.

## RULE 4:18. DISCOVERY AND INSPECTION OF DOCUMENTS AND PROPERTY; COPIES OF DOCUMENTS

### 4:18-1. Production of Documents, Electronically Stored Information, 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, copy, test, or sample any designated documents (including writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, by the respondent into reasonably usable form), or to inspect, copy, test, or sample any designated tangible things that constitute or contain matters within the scope of R. 4:10-2 and that are in the possession, custody or control of the party on whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party on 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.

(b) Procedure. The request may, without leave of court, be served on the plaintiff after commencement of the action and on any other party with or after service of the summons and complaint on 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 request may specify the form or forms in which electronically stored information is to be produced. The party on 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 on 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 on 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, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for objection. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information or if no form was specified in the request, the responding party shall state the form or forms it intends to use. 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. Unless the parties otherwise agree, or the court otherwise orders: (1) 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; (2) if a request does not specify the form or forms for producing electronically stored information, a responding party shall produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and (3) a party need not produce the same electronically stored information in more than one form.

(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.

Note: Source – R.R. 4:24-1. Former rule deleted and new R. 4:18-1 adopted July 14, 1972 to be effective September 5, 1972; rule caption and paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July

12, 2002 to be effective September 3, 2002; caption and paragraphs (a) and (b) amended July 27, 2006 to be effective September 1, 2006 .

#### 4:18-2. Copies of Documents Referred to in Pleading

When any document or paper is referred to in a pleading but is neither annexed thereto nor recited verbatim therein, a copy thereof shall be served on the adverse party within 5 days after service of his written demand therefor.

Note: Source-R.R. 4:24-2.

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## RULE 4:23. FAILURE TO MAKE DISCOVERY; SANCTIONS

### 4:23-1. Motion for Order Compelling Discovery

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(a) Motion. If a deponent fails to answer a question propounded or submitted under R. 4:14 or 4:15, or a corporation or other entity fails to make a designation under R. 4:14-2(c) or 4:15-1, the discovering party may move for an order compelling an answer or designation in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion pursuant to R. 4:10-3.

(b) Evasive or Incomplete Answer. For the purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(c) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party to pay to the party opposing the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Note: Source-R.R. 4:27-1. Former rule deleted and new R. 4:23-1 adopted July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 5, 2000 to be effective September 5, 2000.

### 4:23-2. Failure to Comply With Order

(a) Failure to Be Sworn or Answer a Question. If a deponent fails to be sworn or to answer a question after being directed to do so, the failure may be considered a contempt of that court.

(b) Other Matters. If a party or an officer, director, or managing or authorized agent of a party or a person designated under R. 4:14-2(c) or 4:15-1 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under R. 4:23-1, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the introduction of designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof with or without prejudice, or rendering a judgment by default

against the disobedient party;

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Note: Source-R.R. 4:27-2(a)(b). Former rule deleted and new R. 4:23-2 adopted July 14, 1972 to be effective September 5, 1972; paragraph (b)(2) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (b)(3) amended July 12, 2002 to be effective September 3, 2002.

#### 4:23-3. Expenses on Failure to Admit

If a party fails to admit the genuineness of any document or the truth of any matter as requested under R. 4:22, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, that party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that

- (a) The request was held objectionable pursuant to R. 4:22-1, or
- (b) The admission sought was of no substantial importance, or
- (c) The party failing to admit had reasonable ground for not making the admission.

Note: Source-R.R. 4:27-3. Former rule deleted and new R. 4:23-3 adopted July 14, 1972 to be effective September 5, 1972; introductory paragraph amended July 13, 1994 to be effective September 1, 1994.

#### 4:23-4. Failure of Party to Attend at Own Deposition

If a party or an officer, director, or managing agent of a party or a person designated under R. 4:14-2(c) or 4:15-1 to testify on behalf of a party fails to appear before the officer within this State who is to take his deposition, after being served with a proper notice, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (1), (2) and (3) of R. 4:23-2(b). In lieu of any order or in addition thereto the court shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by R. 4:10-3.

Note: Source – R.R. 4:27-4. Former rule deleted and new R. 4:23-4 adopted July 14, 1972 to be effective September 5, 1972; amended July 5, 2000 to be effective September 5, 2000; caption amended July 27, 2006 to be effective September 1, 2006.

#### 4:23-5. Failure to Make Discovery

- (a) Dismissal.

(1) Without Prejudice. If a demand for discovery pursuant to R. 4:17, R. 4:18-1, or R. 4:19 is not complied with and no timely motion for an extension or a protective order has been made, the party entitled to discovery may, except as otherwise provided by paragraph (c) of this rule, move, on notice, for an order dismissing or suppressing the pleading of the delinquent party. The motion shall be supported by an affidavit reciting the facts of the delinquent party's default and stating that the moving party is not in default in any discovery obligations owed to the delinquent party. Unless good cause for other relief is shown, the court shall enter an order of dismissal or suppression without prejudice. Upon being served with the order of dismissal or suppression without prejudice, counsel for the delinquent party shall forthwith serve a copy of the order on the client by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-F of these rules, specifically explaining the consequences of failure to comply with the discovery obligation and to file and serve a timely motion to restore. If the delinquent party is appearing pro se, service of the order and notice hereby required shall be made by counsel for the moving party. The delinquent party may move on notice for vacation of the dismissal or suppression order at any time before the entry of an order of dismissal or suppression with prejudice. The motion shall be supported by affidavit reciting that the discovery asserted to have been withheld has been fully and responsively provided and shall be accompanied by payment of a \$100 restoration fee to the Clerk of the Superior Court, made payable to the "Treasurer, State of New Jersey," if the motion to vacate is made within 30 days after entry of the order of dismissal or suppression, or a \$300 restoration fee if the motion is made thereafter. If, however, the motion is not made within 90 days after entry of the order of dismissal or suppression, the court may also order the delinquent party to pay sanctions or counsel fees and costs, or both, as a condition of restoration.

(2) With Prejudice. If an order of dismissal or suppression without prejudice has been entered pursuant to paragraph (a) (1) of this rule and not thereafter vacated, the party entitled to the discovery may, after the expiration of 90 days from the date of the order, move on notice for an order of dismissal or suppression with prejudice. The attorney for the delinquent party shall, not later than 7 days prior to the return date of the motion, file and serve an affidavit reciting that the client was previously served as required by subparagraph (a)(1) and has been served with an additional notification, in the form prescribed by Appendix II-G, of the pendency of the motion to dismiss or suppress with prejudice. In lieu thereof, the attorney for the delinquent party may certify that despite diligent inquiry, which shall be detailed in the affidavit, the client's whereabouts have not been able to be determined and such service on the client was therefore not made. If the delinquent party is appearing pro se, the moving party shall attach to the motion a similar affidavit of service of the order and notices or, in lieu thereof, a certification as to why service was not made. Appearance on the return date of the motion shall be mandatory for the attorney for the delinquent party or the delinquent pro se party. The moving party need not appear but may be required to do so by the court. The motion to dismiss or suppress with prejudice shall be granted unless a motion to vacate the previously entered order of dismissal or suppression without prejudice has been filed by the delinquent party and either the demanded and fully responsive discovery has been provided or exceptional circumstances are demonstrated.

(3) General Requirements. All motions made pursuant to this rule shall be accompanied by an appropriate form of order. All affidavits in support of relief under paragraph (a)(1) shall include a representation of prior consultation with or notice to opposing counsel or pro se party as required by R. 1:6-2(c). If the attorney for the delinquent party fails to timely serve the client with the original order of dismissal or suppression without prejudice, fails to file and serve the affidavit and the notifications required by this rule, or fails to appear on the return date of the motion to dismiss or suppress with prejudice, the court shall, unless exceptional circumstances are demonstrated, proceed by order to show cause or take such other appropriate action as may be necessary to obtain compliance with the requirements of this rule. If the court is required to take action to ensure compliance or the motion for dismissal or suppression with prejudice is denied because of extraordinary circumstances, the court may order sanctions or counsel fees and costs, or both. An order of dismissal or suppression shall be entered only in favor of the moving party.

(b) Failure to Furnish Expert's Report. The court at trial may exclude the testimony of a treating physician or of any other expert whose report is not furnished pursuant to R. 4:17-4(a) to the party demanding the same.

(c) Motion to Compel. Prior to moving to dismiss pursuant to subparagraph (a)(1) of this rule, a party may move for an order compelling discovery demanded pursuant to R. 4:18-1 or R. 4:19. An order granting a motion to compel shall specify the date by which compliance is required. If the delinquent party fails to comply by said date, the aggrieved party may apply for dismissal or suppression pursuant to subparagraph (a)(1) of this rule by promptly filing a motion to which the order to compel shall be annexed, supported by a certification asserting the delinquent party's failure to

comply therewith.

Note: Source – R.R. 4:23-6(c)(f), 4:25-2 (fourth sentence); paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) caption amended and subparagraphs (a)(1) captioned and amended, and (a)(2) and (3) captioned and adopted, June 29, 1990 to be effective September 4, 1990; paragraph (a)(3) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(1) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; caption amended, paragraphs (a)(1) and (a)(2) amended, and new paragraph (a)(4) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended and new paragraph (c) added July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended and paragraph (a)(4) deleted July 27, 2006 to be effective September 1, 2006.

#### 4:23-6. Electronically Stored Information

Absent exceptional circumstances, the court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.

Note: Adopted July 27, 2006 be effective September 1, 2006.

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