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Information for Out-of-State Attorneys on the Procedure to Pursue Discovery of a New Jersey Resident for Use in Out-of-State Litigation

(Superior Court of New Jersey - Law Division - Civil Part)

Purpose of This Packet

Where foreign litigation requires a non-party witness' written interrogatory answers, oral deposition or the production of a thing or writing, and the witness, located in New Jersey, will not voluntarily answer interrogatories, appear at an oral deposition or produce a thing or writing, the employment of the power of New Jersey's courts to aid foreign litigation may be requested. New Jersey's Court Rules provide a procedure to issue the necessary process through an *ex-parte* application.

A New Jersey-licensed attorney may apply to the Superior Court *ex parte* with a pleading designated "A Petition Pursuant to R. 4:11-4." The petition requests that the New Jersey Superior Court exercise its judicial power and issue the necessary process to effectuate the foreign court's decree concerning an out-of-state discovery. The New Jersey attorney will file the petition, a proposed form of order and the appropriate filing fee with the Superior Court Clerk. Although not explicitly addressed in the Court Rules, venue should be in the county where the witness resides or works. A Commission, Letters Rogatory or other similar judicial certificate issued in the forum state must support the petition.

This package provides information for an out-of-state attorney on New Jersey's procedure for directing a New Jersey resident to comply with discovery requests for use in litigation in another state.

Note: These materials have been prepared by the New Jersey Superior Court Clerk's Office and the Administrative Office of the Courts. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse or on the Judiciary's Internet site njcourts.com. However, you are ultimately responsible for the content of your court papers.

The numbered steps listed below outline the procedure for obtaining a subpoena to pursue discovery of a New Jersey resident for use by an out-of-state attorney in use in another jurisdiction.

Step 1: Review and Comply With the Requirements of the Forum State to Pursue Discovery Out-of- State.

Obtain a Commission or Letters Rogatory under the seal of the appropriate court clerk or public official authorized in the forum state to issue such a document.

Step 2: Retain a New Jersey-Licensed Attorney to Petition the Superior Court of New Jersey for an Order Authorizing the Issuance of a Subpoena Commanding the New Jersey Resident to Answer Written Interrogatories or To Appear at and Submit to a Deposition.

The New Jersey attorney will file with the Superior Court, Law Division in the county in which the witness resides, an ex parte petition (Form A), a proposed form of order (Form B), and a proposed subpoena. There is a \$50.00 fee which may be paid by money order or check made payable to “*Treasurer, State of New Jersey.*”

Step 3: Upon Receipt of The Signed Order and Subpoena, Have the New Jersey Attorney Serve the Subpoena or Notice in Lieu of Subpoena.

If the witness resists the subpoena or fails to appear, then the New Jersey attorney may defend its issuance or apply to the court for appropriate sanctions, as the case may be.

Note: Out-of-state counsel should consult their state’s court rules concerning the need to serve the out-of state witness with a notice of a deposition or a judicial subpoena from the forum state. If required, counsel should attach the same to the Commission, Letters Rogatory or other judicial certificate. The time, date and place of the deposition should be indicated in the petition. The location of the deposition must be in the county where the person to be deposed lives, works or does business. Sample forms for the petition and order follow.

Note: The New Jersey Administrative Office of the Courts has prepared these materials to give out-of-state attorneys insight into the New Jersey’s procedure. Retained New Jersey counsel is ultimately responsible for the content of the pleadings filed and, therefore, New Jersey legal counsel must tailor any pleading to the facts, circumstances and New Jersey statutes and court rules then in effect.

References:

Court Rule 1:5-6	Filing
Court Rule 1:9-1	Subpoenas; For Attendance of Witnesses; Forms; Issuance; Notice in Lieu of Subpoena
Court Rule 1:9-2	For Production of Documentary Evidence; Notice in Lieu of Subpoena
Court Rule 1:9-5	Failure to Appear
Court Rule 1:9-6	Enforcement of Subpoena of Pubic Officer or Agency
Court Rule 1:21-1	Who May Practice; Appearance in Court
Court Rule 4:11-4	Testimony for Use in Foreign Jurisdictions
Court Rule 4:12-1	Persons Who May Take Depositions; Within State
Court Rule 4:14-7	Subpoena for Taking Depositions
N.J.S.A. 22A:2-7	Law Division of Superior Court, Other Fees

Plaintiff or Filing Attorney Information:

Name: _____

NJ Attorney ID Number: _____

Address: _____

Telephone Number: _____

I/M/O Application for the Issuance of a
Subpoena to

Superior Court of New Jersey
_____ Division _____ County

_____ Part

Docket No. _____

Civil Action
Ex-Parte Petition for Issuance of
Subpoena Pursuant to
Court Rule 4:11-4

Petitioner _____, applying for the authority to issue a *Rule 4:11-4* subpoena, hereby certifies and says:

1. I have been retained as local counsel by the firm of _____, in their capacity as attorney for _____, in an action in the State of _____, captioned _____, plaintiff(s), v. _____, defendant(s), bearing docket number _____.

2. A Commission was issued out of the _____ Court of the State of _____, authorizing the [deposition on oral testimony] [deposition on written interrogatory] [a subpoena duces tecum for the production of things or documents] of _____, who lives, works or does business at _____, in the City/Township/Borough of _____, County of _____, and State of New Jersey. A copy of the Commission [Letters Rogatory] is attached to this petition as Exhibit A.

3. I submit this petition in support of my application for an Order pursuant to *Rule 4:11-4* authorizing that a subpoena be issued to _____ at the aforementioned address requiring that he/she/it [give his/her/its deposition on written interrogatory] [appear at ____ o'clock in the ____ noon on _____, 20____, (date) at the office of _____, located at _____, New Jersey for taking his/her/its deposition on oral testimony] [requiring that he/she/it produce the following things or documents] _____.

The deposition on oral testimony shall continue from day to day until completed.

4. _____, [out-of-state attorney] has advised me of the following relevant facts:

a. On or about _____, 20____, a motion was made in the aforementioned litigation in the State of _____ for the appointment of a Commissioner in the State of New Jersey to cause service of a subpoena upon and [for taking the deposition of _____ on oral testimony] [for taking the

deposition of _____ by written interrogatory] [for the production of things or documents in the possession of _____].

b. On _____, 20____, the Honorable _____, Judge of the _____ Court, signed an Order directing the undersigned be appointed Commissioner of the above stated purpose. A copy of the Order is attached as Exhibit B.

c. The [deposition on oral testimony] [deposition on written interrogatory] [the production of the thing or documents by] of this witness is essential to this case because

d. No previous application has been made for the relief herein requested.

WHEREFORE, the petitioner respectfully requests that an Order be entered:

a. authorizing the issuance of a subpoena, in aid of foreign litigation, directing _____, [to appear and give oral testimony] [give answers under oath to written interrogatories] [produce (here describe the things or documents)] pursuant to the Commission issued by the State of _____; and

b. authorizing the petitioner the right to [adjourn, recess or reschedule the deposition on oral testimony] [extend the time for answering written interrogatories] [extend the time to produce things or documents] by consent without any further application to this court.

c. for such other relief as is just and proper.

Dated: _____

Signature

Verification

1. I am the petitioner in the within matter.
2. I have read the foregoing petition and on my own personal knowledge, except those facts related to me by out-of-state counsel, I know that the facts therein are true.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____

Signature: _____

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Plaintiff or Filing Attorney Information:

Name: _____

NJ Attorney ID Number: _____

Address: _____

Telephone Number: _____

I/M/O Application for the Issuance of a Subpoena to

Superior Court of New Jersey
_____ Division _____ County

_____ Part

Docket No. _____

**Civil Action
Order Pursuant to
Court Rule 4:11-4**

This matter having come before the Court on the application of _____, for an Order authoring the issuance of a subpoena to _____, and it appearing that the _____ Court of the State of _____ has issued a Commission [Letters Rogatory] in a pending case captioned _____, plaintiff(s), v. _____, defendant(s), docket/case number _____, authorizing _____ to *[take the deposition on oral testimony] [take the deposition on written interrogatory] [issue a subpoena duces tecum for the production of things or documents]* of _____ who lives, resides or does business in the City/Township/Borough of _____, New Jersey, and it further appearing that good cause exists.

IT IS on this ____ day of _____, 20____, ORDERED that a subpoena may issue commanding _____ to appear before _____ on (date) _____, 20____, at ____ o'clock in the ____ noon at the office of _____, located at _____, to *[give oral testimony under oath] [provide answers under oath to written interrogatories] [produce things or documents]* in the above captioned matter; and it is further **ORDERED** that the petitioner may *[adjourn and reschedule the time, date and place of the deposition by oral testimony] [extend the time for answering written interrogatories] [extent the time to produce things or documents]* by consent without any further application to this court.

J.S.C.

BEFORE FILLING, BE SURE TO REMOVE THIS SENTENCE FROM THE DOCUMENT AS WELL AS THE DESCRIPTIVE INSTRUCTIONS INCLUDED IN BRACKETS.