RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:13. DEPOSITIONS, DISCOVERY

3:13-1. [Deleted]

Note: Source-R.R. 3:5-3(a)(b). Paragraph designations and paragraph (b) adopted July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective immediately; paragraph (b) amended July 15, 1982 to be effective September 13, 1982; text amended and redesignated R. 3:9-1(e) and (d) July 13, 1994 to be effective January 1, 1995.

3:13-2. Depositions

(a) When Authorized. If it appears to the judge of the court in which a complaint, indictment or accusation is pending that a material witness is likely to be unable to testify at trial because of death or physical or mental incapacity, the court, upon motion and notice to the parties, and after a showing that such action is necessary to prevent manifest injustice, may order that a deposition of the testimony of such witness be taken and that any designated books, papers, documents or tangible objects that are not privileged, including, but not limited to, 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, into reasonably usable form, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, on written motion of the witness and upon notice to the parties, the court may direct that the witness's deposition be taken, and after the deposition has been subscribed the court may discharge the witness.

(b) Procedure. The deposition shall be videotaped unless the court orders otherwise. The deposition shall be taken before the judge at such location as will be convenient to all parties. If, because the deposition is to be taken outside of the State, the judge is unable to preside, the deposition shall be taken before a person designated by the judge to perform that function. All parties and counsel shall have a right to be present at the deposition. Examination, cross-examination and determination of admissibility of evidence, shall proceed in the same manner as at trial. Videotaping shall be done by a person independent of both prosecution and defense and chosen by the judge.

(c) Use. Depositions taken pursuant to this rule may be used at trial in lieu of live testimony of the witness in open court if the witness is unable to testify because of death or physical or mental incapacity. In the case of a witness deposed to allow discharge from commitment for failure to give bail as provided in paragraph (a) above, the deposition may be used, in addition, if the court finds that the party offering the deposition has been unable to procure the attendance of the witness by subpoena or otherwise. The deposition shall be admissible insofar as allowable under the Rules of Evidence applied as though the witness were then present and testifying. The deposition shall not be used unless the court finds that the circumstances surrounding its taking allowed full preparation and cross-

examination by all parties. A record of the videotaped testimony, which shall be part of the official record of the court proceedings, shall be made in the same manner as if the witness were present and testifying, but, in addition, the videotape shall be retained by the court. If the judge finds that use of the videotaped testimony would be unfairly prejudicial to a party, the judge may order that only the audiotape of the testimony be used or that the transcript of the witness's testimony be read to the jury if either of these limitations would prevent such prejudice.

(d) Jury Instruction. In any case where a deposition is used in any form, the court shall instruct the jury that this procedure is employed for the convenience of the witness and that the jury should draw no inference from its use.

Note: Source-R.R. 3:5-8(a)(b)(c)(d)(e). Text of former rule deleted and new rule adopted November 5, 1986 to be effective January 1, 1987; caption amended, R. 3:13-2 amended and redesignated as R. 3:13-1(a) and (c) July 13, 1994 to be effective January 1, 1995; Rule redesignation of July 13, 1994 eliminated December 9, 1994, to be effective January 1, 1995; paragraph (a) amended December 4, 2012 to be effective January 1, 2013.

3:13-3. Discovery and Inspection

(a) Pre-Indictment Discovery. Unless the defendant agrees to more limited discovery, where the prosecutor has made a pre-indictment plea offer, the prosecutor shall, at the time the plea offer is made, provide defense counsel with all available relevant material that would be discoverable at the time of indictment pursuant to paragraph (b)(1) of this rule, except that:

(1) where the prosecutor determines that pre-indictment delivery of all discoverable material would hinder or jeopardize a prosecution or investigation, the prosecutor, consistent with the intent of this rule, shall provide to defense counsel at the time the plea offer is made such relevant material as would not hinder or jeopardize the prosecution or investigation and shall advise defense counsel that complete discovery has not been provided; or

(2) where the prosecutor determines that physical or electronic delivery of the discoverable material would impose an unreasonable administrative burden on the prosecutor's office given the nature, format, manner of collation or volume of discoverable material, the prosecutor may in his or her discretion make discovery available by permitting defense counsel to inspect and copy or photograph such material at the prosecutor's office.

Notwithstanding the exceptions contained in paragraphs (a)(1) and (a)(2) of this rule, the prosecutor shall provide defense counsel with any exculpatory information or material.

(b) Post-Indictment Discovery.

(1) Discovery by the Defendant. Except for good cause shown, the prosecutor's discovery for each defendant named in the indictment shall be delivered to the criminal division manager's office, or shall be available through the prosecutor's office, upon the return or unsealing of the indictment. Good cause shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy. In such circumstances, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph discoverable materials at the prosecutor's office, rather than by copying and delivering such materials. The prosecutor shall also provide defense counsel with a listing of the materials that have been supplied in discovery. If any discoverable materials known to the prosecutor have not been supplied, the prosecutor shall also provide defense counsel with a listing of the materials that are missing and explain why they have not been supplied.

If the defendant is represented by the public defender, defendant's attorney shall obtain a copy of the discovery from the prosecutor's office or the criminal division manager's office prior to the arraignment. However, if the defendant has retained private counsel, upon written request of counsel submitted along with a copy of counsel's entry of appearance and received by the prosecutor's office prior to the date of the arraignment, the prosecutor shall, within three business days, send the discovery to defense counsel either by U.S. mail at the defendant's cost or by e-mail without charge, with the manner of transmittal at the prosecutor's discretion. Defense counsel shall simultaneously send a copy of the request for mail or e-mail discovery to the criminal division manager's office.

If the defendant is unrepresented at the prearraignment conference, a copy of the discovery shall be provided to defense counsel upon request as provided for in the preceding paragraph, or at the arraignment/status conference, which shall occur no later than 28 days after the return or unsealing of the indictment.

A defendant who does not seek discovery from the State shall so notify the criminal division manager's office and the prosecutor, and the defendant need not provide discovery to the State pursuant to sections (b)(2) or (f), except as required by Rule 3:12-1 or otherwise required by law.

Discovery shall include exculpatory information or material. It shall also include, but is not limited to, the following relevant material:

(A) books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and 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, into reasonably usable form;

(B) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against

penal interest made by the defendant that are known to the prosecution but not recorded. The prosecutor also shall provide the defendant with transcripts of all electronically recorded statements or confessions by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(C) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of the prosecutor;

(D) reports or records of prior convictions of the defendant;

(E) books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the prosecutor, including, but not limited to, writings, drawings, graphs, charts, photographs, video and 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, into reasonably usable form;

(F) names, addresses, and birthdates of any persons whom the prosecutor knows to have relevant evidence or information including a designation by the prosecutor as to which of those persons may be called as witnesses;

(G) record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the prosecutor and any relevant record of prior conviction of such persons. The prosecutor also shall provide the defendant with transcripts of all electronically recorded co-defendant and witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference, but only if the prosecutor intends to call that co-defendant or witness as a witness at trial.

(H) police reports that are within the possession, custody, or control of the prosecutor;

(I) names and addresses of each person whom the prosecutor expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is not furnished 30 days in advance of trial, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(J) all records, including notes, reports and electronic recordings relating to an identification procedure, as well as identifications made or attempted to be made.

(2) Discovery by the State. Defense counsel shall provide a copy of the discovery materials to the prosecuting attorney by a date to be determined by the trial judge, except in no event later than 14 days after the date of the arraignment. Defense

counsel shall also provide the prosecuting attorney with a listing of the materials that have been supplied in discovery. If any discoverable materials known to defense counsel have not been supplied, defense counsel also shall provide the prosecuting attorney with a listing of the materials that are missing and explain why they have not been supplied. A defendant shall provide the State with all relevant material, including, but not limited to, the following:

(A) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of defense counsel;

(B) any relevant books, papers, documents or tangible objects, buildings or places or copies thereof, which are within the possession, custody or control of defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and 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, into reasonably usable form;

(C) the names, addresses, and birthdates of those persons known to defendant who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

(D) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the State may call as a witness at trial. The defendant also shall provide the State with transcripts of all electronically recorded witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(E) names and address of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is not furnished 30 days in advance of trial the expert may, upon application by the prosecutor, be barred from testifying at trial.

(3) Discovery Provided through Electronic Means. Unless otherwise ordered by the court, the parties may provide discovery pursuant to paragraphs (a) and (b) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be

provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(c) Motions for Discovery. No motion for discovery shall be filed unless the moving party certifies that the prosecutor and defense counsel have satisfied the discovery meet and confer requirements of R. 3:9-1(c).

(d) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or the party's attorney or agents, in connection with the investigation, prosecution or defense of the matter nor does it require discovery by the State of records or statements, signed or unsigned, of defendant made to defendant's attorney or agents.

(e) Protective Orders.

(1) Grounds. Upon motion and for good cause shown the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges; or any other relevant considerations.

(2) Procedure. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone, and if the court thereafter enters a protective order, the entire text of the statement shall be sealed and preserved in the records of the court, to be made available only to the appellate court in the event of an appeal.

(f) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, it may order such party to permit the discovery of materials not previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

Note: Source-R.R. 3:5-11(a)(b)(c)(d)(e)(f)(g)(h). Paragraphs (b)(c)(f) and (h) deleted; paragraph (a) amended and paragraphs (d)(e)(g) and (i) amended and redesignated June 29, 1973 to be effective September 10, 1973. Paragraph (b) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraphs (a) and (b) amended July 22, 1983 to be effective September 12, 1983; new paragraphs (a) and (b) added, former paragraphs (a), (b), (c), (d) and(f) amended and redesignated paragraphs (c), (d), (e), (f) and (g) respectively and former paragraph (e) deleted July 13, 1994 to be effective January 1, 1995; Rule redesignation of July 13, 1994 eliminated

December 9, 1994, to be effective January 1, 1995; paragraphs (c)(6) and (d)(3) amended June 15, 2007 to be effective September 1, 2007; subparagraph(f)(1) amended July 21, 2011 to be effective September 1, 2011; new subparagraph (c)(10) adopted July 19, 2012 to be effective September 4, 2012; paragraph (a) amended, paragraph (b) text deleted, paragraph (c) amended and renumbered as paragraph (b)(1), paragraph (d) amended and renumbered as paragraph (b)(2), new paragraphs (b)(3) and (c) adopted, paragraphs (e) and (f) renumbered as paragraphs (d) and (e), paragraph (g) amended and renumbered as paragraph(f) December 4, 2012 to be effective January 1, 2013; paragraph (b)(1)(I) amended July 27, 2015 to be effective September 1, 2015; paragraph (b) amended April 12, 2016 to be effective May 20, 2016; paragraph (c) amended August 1, 2016 to be effective September 1, 2016.

3:13-4. [Deleted]

Note: Adopted September 28, 1982 to be effective immediately; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 13, 1994 and December 9, 1994, to be effective January 1, 1995; paragraph (a) amended March 14, 2005 to be effective immediately; rule deleted in its entirety July 28, 2017 effective September 1, 2017.

3:13-5. Discovery Fees

(a) Standard Fees. The prosecutor may charge a fee for a copy or copies of discovery. The fee assessed for discovery embodied in the form of printed matter shall be $ 0.05 per letter size page or smaller, and $ 0.07 per legal size page or larger. From time to time, as necessary, these rates may be revised pursuant to a schedule promulgated by the Administrative Director of the Courts. If the prosecutor can demonstrate that the actual costs for copying discovery exceed the foregoing rates, the prosecutor shall be permitted to charge a reasonable amount equal to the actual costs of copying. The actual copying costs shall be the costs of materials and supplies used to copy the discovery, but shall not include the costs of labor or other overhead expenses associated with making the copies, except as provided for in paragraph (b) of this rule. Electronic records and non-printed materials shall be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies such as computer discs.

(b) Special Service Charge for Printed Copies. Whenever the nature, format, manner of collation, or volume of discovery embodied in the form of printed matter to be copied is such that the discovery cannot be reproduced by ordinary document copying equipment in ordinary business size, or is such that it would involve an extraordinary expenditure of time and effort to copy, the prosecutor may charge, in addition to the actual copying costs, a special service charge that shall be reasonable and shall be based on the actual direct costs of providing the copy or copies. Pursuant to R. 3:10-1, defense counsel shall have the opportunity to review and object to the charge prior to it being incurred.

(c) Special Service Charge for Electronic Records. If defense counsel requests an electronic record: (1) in a medium or format not routinely used by the prosecutor; (2) not routinely developed or maintained by the prosecutor; or (3) requiring a substantial amount of manipulation or programming of information technology, the prosecutor may charge, in

addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on (1) the cost of any extensive use of information technology, or (2) the labor cost of personnel providing the service that is actually incurred by the prosecutor or attributable to the prosecutor for the programming, clerical, and supervisory assistance required, or (3) both. Pursuant to R. 3:10-1, defense counsel shall have the opportunity to review and object to the charge prior to it being incurred.

Note: Adopted December 4, 2012 to be effective January 1, 2013.