

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 4:14. DEPOSITIONS UPON ORAL EXAMINATION

4:14-1. When Depositions May Be Taken

Except as otherwise provided by R. 4:14-9(a), after commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 35 days after service of the summons and complaint upon the defendant by any manner, except that leave is not required if the defendant has already served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in R. 4:14-7. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

Note: Source-R.R. 4:16-1. Former rule deleted and new R. 4:14-1 adopted July 14, 1972 to be effective September 5, 1972 (formerly R. 4:10-1); amended July 21, 1980 to be effective September 8, 1980; amended July 10, 1998 to be effective September 1, 1998; amended July 5, 2000 to be effective September 5, 2000.

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

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

(b) Time. The court may for cause shown enlarge or shorten the time for taking the deposition.

(c) Organizations. A party may in the notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth for each person designated the matters on which testimony will be given. The persons so designated shall testify as to matters known or reasonably available to the organization.

(d) Production of Things. The notice to a party deponent may be accompanied by a request made in compliance with and in accordance with the procedure stated in

R. 4:18-1 for the production of documents and tangible things at the taking of the deposition.

Note: Source-R.R. 4:20-1. Former rule deleted and new R. 4:14-2 adopted July 14, 1972 to be effective September 5, 1972 (formerly in R. 4:10-1 and 4:14-1); paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraphs (a) and (c) amended July 13, 1994 to be effective September 1, 1994.

4:14-3. Examination and Cross-Examination; Record of Examination; Oath; Objections

(a) Examination and Cross-Examination. Examination and cross-examination of deponents may proceed as permitted in the trial of actions in open court, but the cross-examination need not be limited to the subject matter of the examination in chief.

(b) Oath; Record. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be recorded and transcribed on a typewriter unless the parties agree otherwise.

(c) Objections. No objection shall be made during the taking of a deposition except those addressed to the form of a question or to assert a privilege, a right to confidentiality or a limitation pursuant to a previously entered court order. The right to object on other grounds is preserved and may be asserted at the time the deposition testimony is proffered at trial. An objection to the form of a question shall include a statement by the objector as to why the form is objectionable so as to allow the interrogator to amend the question. No objection shall be expressed in language that suggests an answer to the deponent. Subject to R. 4:14-4, an attorney shall not instruct a witness not to answer a question unless the basis of the objection is privilege, a right to confidentiality or a limitation pursuant to a previously entered court order. All objections made at the time of the examination to the qualifications of the officer taking the deposition or the person recording it, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidential objections to a videotaped deposition of a treating physician or expert witness which is taken for use in lieu of trial testimony shall be made and proceeded upon in accordance with R. 4:14-9(f).

(d) No Adjournment. Except as otherwise provided by R. 4:14-4 and R. 4:23-1(a) all depositions shall be taken continuously and without adjournment unless the court otherwise orders or the parties and the deponent stipulate otherwise.

(e) Written Questions. In lieu of participating in an oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(f) Consultation With the Deponent. Once the deponent has been sworn, there shall be no communication between the deponent and counsel during the course of the deposition while testimony is being taken except with regard to the assertion of a claim of privilege, a right to confidentiality or a limitation pursuant to a previously entered court order.

Note: Source-R.R. 4:16-3, 4:20-3. Paragraphs (b), (d) and (e) amended July 14, 1972 to be effective September 5, 1972 (Paragraph (a) formerly R. 4:10-3); paragraph (c) amended July 21, 1980 to be effective September 8, 1980; paragraphs (b) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended and paragraph (f) added June 28, 1996 to be effective September 1, 1996.

4:14-4. Motion or Application to Terminate or Limit Examination or for Sanctions

At any time during the taking of the deposition, on formal motion or telephone application to the court of a party or of the deponent and upon a showing that the examination or any part thereof is being conducted or defended in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, or in violation of R. 4:14-3(c) or (f), the court may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in R. 4:10-3. If the order made terminates the examination, it shall be resumed thereafter only upon further order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion or telephone application for an order. The provisions of R. 4:23-1(c) shall apply to the award of expenses incurred in making or defending against the motion or telephone application.

Note: Source-R.R. 4:20-4. Amended July 14, 1972 to be effective September 5, 1972; amended June 28, 1996 to be effective September 1, 1996.

4:14-5. Submission to Witness; Changes; Signing

If the officer at the taking of the deposition is a certified shorthand reporter, the witness shall not sign the deposition. If the officer is not a certified shorthand reporter, then unless reading and signing of the deposition are waived by stipulation of the parties, the officer shall request the deponent to appear at a stated time for the purpose of reading and signing it. At that time or at such later time as the officer and witness agree upon, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, and any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness. If the witness fails to appear at the time stated or if the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the witness' failure or refusal to sign, together with the reason, if any, given therefor; and the

deposition may then be used as fully as though signed, unless on a motion to suppress under R. 4:16-4(d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

Note: Source-R.R. 4:20-5. Amended July 14, 1972 to be effective September 5, 1972; amended July 13, 1994 to be effective September 1, 1994.

4:14-6. Certification and Filing by Officer; Exhibits; Copies

(a) Certification and Filing. The officer shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony. The officer shall then promptly file with the deputy clerk of the Superior Court in the county of venue a statement captioned in the cause setting forth the date on which the deposition was taken, the name and address of the witness, and the name and address of the reporter from whom a transcript of the deposition may be obtained by payment of the prescribed fee. The reporter shall furnish the party taking the deposition with the original and a copy thereof. Depositions shall not be filed unless the court so orders on its or a party's motion. The original deposition shall, however, be made available to the judge to whom any proceeding in the matter has been assigned for disposition at the time of the hearing or as the judge may otherwise request. Filed depositions shall be returned by the court to the party taking the deposition after the termination of the action. A videotaped deposition shall be sealed and filed in accordance with R. 4:14-9(d). A reporter's backup recording, if any, used as an aid in preparing the transcript, is not a judicial record and shall not be made available to any party absent an order of the court.

(b) Documentary Evidence. Documentary evidence exhibited before the officer or exhibits proved or identified by the witness, may be annexed to and returned with the deposition; or the officer shall, if requested by the party producing the documentary evidence or exhibit, mark it as an exhibit in the action, and return it to the party offering the same, and the same shall be received in evidence as if annexed to and returned with the deposition.

(c) Copies. The party taking the deposition shall bear the cost thereof and of promptly furnishing a copy of the transcript to the witness deposed, if an adverse party, and if not, to any adverse party. The copy so furnished shall be made available to all other parties for their inspection and copying. Copies of videotaped depositions shall be made and furnished in accordance with R. 4:14-9(d).

Note: Source — R.R. 4:20-6(a)(b)(c). Paragraph (c) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (c) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraphs (a) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended August 1, 2016 to be effective September 1, 2016.

4:14-7. Subpoena for Taking Depositions

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

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

(1) Fact Witnesses. A resident of this State subpoenaed for the taking of a deposition may be required to attend an examination only at a reasonably convenient time and only (A) in the county of this State in which he or she resides, is employed or transacts business in person; or (B) at a location in New Jersey within 20 miles from the witness's residence or place of business; or (C) at such other convenient place fixed by court order. A nonresident of this State subpoenaed within this State may be required to attend only at a reasonably convenient time and only in the county in which he or she is served, at a place within this State not more than 40 miles from the place of service, or at such other convenient place fixed by court order. The party subpoenaing a witness, other than one subject to deposition on notice, shall reimburse the witness for the out-of-pocket expenses and loss of pay, if any, incurred in attending at the taking of depositions.

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

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

whom the evidence is so furnished shall forthwith provide notice to all other parties of the receipt thereof and of its specific nature and contents, and shall make it available to all other parties for inspection and copying.

Note: Source - R.R. 4:20-1 (last sentence), 4:46-4(a)(b). Paragraphs (a) and (b) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) adopted November 5, 1986 to be effective January 1, 1987; paragraph (b) recaptioned paragraph (b)(1) and amended, paragraph (b)(2) adopted and paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b)(1) amended July 27, 2006 to be effective September 1, 2006.

4:14-8. Failure to Attend or Serve Subpoena; Expenses

If the party giving notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, or if the party giving the notice fails to serve a subpoena upon a witness who because of such failure does not attend and another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred as a result of attendance either by the attending party or that party's attorney, including reasonable attorney's fees.

Note: Source-R.R. 4:20-7(a)(b). Amended July 14, 1972 to be effective September 5, 1972; amended July 13, 1994 to be effective September 1, 1994.

4:14-9. Audiovisual Recording of Depositions

Videotaped depositions may be taken for discovery purposes or for use at trial in accordance with the applicable provisions of these discovery rules subject to the following further requirements and conditions:

(a) Time for Taking Audiovisually-Recorded Depositions. The provisions of R. 4:14-1 shall apply to audiovisually-recorded depositions except that such a deposition of a treating physician or expert witness which is intended for use in lieu of trial testimony shall not be noticed for taking until 30 days after a written report of that witness has been furnished to all parties. Any party desiring to take a discovery deposition of that witness shall do so within such 30-day period.

(b) Notice. A party intending to make an audiovisual recording of a deposition shall serve the notice required by R. 4:14-2(a) not less than 10 days prior to the date therein fixed for the taking of the deposition. The notice shall further state that the deposition is to be audiovisually-recorded.

(c) Transcript. The audiovisual recording of a deposition shall not be deemed to except it from the general requirement of stenographic recording and typewritten

transcript. Prior to the swearing of the witness by the officer, the name, address and firm of the person making the audiovisual recording shall be stated on the record.

(d) Filing, Copies. Immediately following the conclusion of the deposition, the person making the audiovisual recording shall deliver the audiovisual recording to the officer taking or directing the deposition, who shall mark it as an exhibit to the deposition, if feasible. Further, the person making the audiovisual recording shall, if feasible, provide a copy of the audiovisual recording to all parties present. If copies cannot be made at the conclusion of the deposition, the party who noticed the audiovisual recording of the deposition shall promptly furnish a copy of the audiovisual recording to all parties appearing at the deposition.

(e) Use. Audiovisually-recorded depositions may be used at trial in accordance with R. 4:16-1. In addition, an audiovisually-recorded deposition of a treating physician or expert witness, which has been taken in accordance with these rules, may be used at trial in lieu of testimony whether or not such witness is available to testify and provided further that the party who has taken the deposition has produced the witness for further audiovisually-recorded deposition necessitated by discovery completed following the original deposition or for other good cause. Disputes among parties regarding the recall of a treating physician or expert witness shall be resolved by motion, which shall be made as early as practicable before trial. The taking of an audiovisually-recorded deposition of a treating physician or expert witness shall not preclude the party taking the deposition from producing the witness at trial.

(f) Objections. Where an audiovisually-recorded deposition is taken for use at trial in lieu of testimony, all evidential objections shall, to the extent practicable, be made during the course of the deposition. Each party making such objection shall, within 45 days following the completion of the deposition, file a motion for rulings thereon and all such motions shall be consolidated for hearing. The court may, however, on its own motion or the motion of a party, abbreviate the time period if the deposition of a treating physician or expert witness is taken pursuant to R. 4:36-3(c) or for other good cause. A copy of the audiovisual recording shall be edited in accordance with said rulings and the copy so edited shall be made available for copying to all other parties.

(g) Cost of Audiovisually-Recorded Depositions. All out-of-pocket expenses incurred in connection with an audiovisual recording of a deposition, including making required copies and edits, shall be borne, in the first instance, by the party taking the deposition. The cost of court presentation of the audiovisual recording shall be borne, in the first instance, by the party offering that recording.

(h) Record on Appeal. Where an audiovisual recording of a deposition is used at trial, the typewritten transcript thereof shall be included in the record on appeal. The audiovisual recording itself shall not constitute part of the record on appeal except on motion for good cause shown.

Note: Adopted July 21, 1980 to be effective September 8, 1980; paragraph (e) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (d) amended June 28, 1996 to be effective September 1, 1996; introductory text and

paragraphs (b), (d), and (f) amended July 28, 2004 to be effective September 1, 2004; caption, introductory text, paragraphs (a) and (g) caption and text, and paragraphs (b), (c), (d), (e), (f), and (h) amended July 19, 2012 to be effective September 4, 2012.