Rule 4:104. Discovery

4:104-1. General Principles.

Except as otherwise provided in this Chapter XI, R. 4:10 to R. 4:19, R. 4:22, and R. 4:23 shall apply to the conduct of discovery in cases in the CBLP.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:104-2. Timing of Discovery

(a) A party may not seek discovery from any source before the parties have conferred as required by R. 4:103-2, except when expressly authorized by these rules, by stipulation, or by court order.

(b) More than 35 days after the summons and complaint are served, a request under R. 4:18 may be delivered: (1) to that served party by another party or (2) by that served party to any plaintiff or to any other party that has been served. Any R. 4:18 requests served before the R. 4:103-2 conference shall be deemed served on the day of the first R. 4:103-2 conference.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:104-3. Depositions Upon Oral Examination

(a) Unless otherwise stipulated by the parties or ordered by the court:

(1) The number of depositions taken by plaintiffs shall be limited to 10. The number of depositions taken by defendants, including third-party defendants, shall also be limited to 10; and

(2) Depositions shall be limited to 7 hours per deponent, excluding breaks. The court must allow additional time consistent with R. 4:10-2(a) and (g) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination. When multiple parties intend to examine a deponent, they shall agree in advance of the deposition to an allocation of the time allowed for the deposition. If they cannot agree on such an allocation, they shall raise the issue with the court for resolution, and the deposition will be adjourned, if necessary, until after the court has resolved the dispute.

(b) For purposes of assessing compliance with a limitation on the number of depositions, unless the parties stipulate or the court orders otherwise, every seven hours of testimony by witnesses testifying in response to a notice for the testimony of an organization under R. 4:14-2 shall constitute one deposition. For example, if an organization designates three individuals to testify in response to a R. 4:14-2 notice and the three individuals testify for a total of 14 hours, the deposition testimony shall count as two depositions. Alternatively, if two individuals are designated in response to a R. 4:14-2 notice and testify for a total of 21 hours, their testimony shall count as three depositions.

(c) The court may impose an appropriate sanction – including the reasonable expenses and attorney's fees incurred by any party – on a person who impedes, delays, or frustrates the fair examination of the deponent.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:104-4. Interrogatories to Parties

(a) Rules 4:17-2, -5, and -6 shall not apply to cases in the CBLP. The requirement in R. 4:13 that stipulations extending the time to answer interrogatories receive court approval shall not apply to cases in the CBLP.

(b) The 60-day period in R. 4:17-4(b) for serving answers to interrogatories is reduced to 30 days, unless another time period is stipulated by the parties or ordered by the court.

(c) Each party may serve on each adverse party no more than 15 interrogatories, including subparts, unless another limit is stipulated by the parties or ordered by the court.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:104-5. Production of Documents; Electronically Stored Information; Entry Upon Land for Inspection and Other Purposes; Pre-Litigation Discovery

(a) Contents of Response to Discovery Request. A party's written response under R. 4:18-1(b)(2) shall, in addition to providing the information described in R. 4:18-1(b)(2), state specifically: (1) whether the objection(s) interposed pertain to all or part of a request being challenged; (2) whether any documents or categories of documents are being withheld and, if so, which of the stated objections forms the basis for the responding party's decision to withhold otherwise responsive documents or categories of documents; and (3) the manner in which the responding party intends to limit the scope of its production.

(b) Failure to Provide Electronically Stored Information.

(1) If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(A) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(B) only upon finding that that the party acted with the intent to deprive another party of the information's use in the litigation may: (i) presume that the lost information was unfavorable to the party; (ii) instruct the jury that it may or must presume the information was unfavorable to the party; or (iii) dismiss the action or enter a default judgment.

(2) A party that is subject to an order entered by the court directing the preservation or production of electronically stored information and who acts in compliance with the terms of that order may thereafter apply its regular document destruction procedures to any electronically stored information that has not been ordered to be produced or preserved and shall not be subject to any sanction for the destruction of electronically stored information that is not subject to its obligation to produce or preserve under such court order.

(c) Privilege Logs.

(1) The preference in the CBLP is for the parties to use categorical designations, where appropriate, to reduce the time and costs associated with preparing privilege logs. The parties are required to address such considerations in good faith as part of the meet and confer process and to agree, where possible, to employ a categorical approach to privilege designations. The parties are encouraged to use any reasoned method of organizing the documents that will facilitate an orderly assessment as to the appropriateness of withholding

documents in the specified category. If the parties agree to use a categorical approach, for each category of documents that may be established, the producing party shall provide a certification, pursuant to R. 1:4-4, setting forth with specificity the facts supporting the privileged or protected status of the information included within the category. The certification shall also describe the steps taken to identify the documents so categorized, including but not limited to whether each document was reviewed or some form of sampling or electronic key-word searching was employed, and if the latter how the sampling or key-word searching was conducted.

(2) In the event the requesting party refuses to permit a categorical approach, and instead insists on a document-by-document listing on the privilege log, the producing party, on a showing of good cause, may apply to the court for an order allowing it to use a categorical approach or allocating costs, including attorneys' fees, incurred with respect to preparing the document-by-document log.

(3) In the event a document-by-document log is prepared, each uninterrupted e-mail chain shall constitute a single entry, and the description accompanying the entry shall include the following:

(A) an indication that the e-mails represent an uninterrupted dialogue;

(B) the beginning and ending dates and times (as noted in the e-mails) of the dialogue;

(C) the number of e-mails within the dialogue; and

(D) the names of all authors and recipients, together with sufficient identifying information about each person to allow for a considered assessment of the privilege issues.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:104-6. Proposed Form of Discovery Confidentiality Order

(a) For all cases in the CBLP that warrant the entry of a confidentiality order, the parties shall submit to the court the proposed stipulation and order that appears as Appendix XXX to these rules.

(b) In the event the parties wish to deviate from the form set forth in Appendix XXX, they shall submit to the court a red-line of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

(c) Nothing in this rule shall preclude a party from seeking any relief available under R. 4:10-3.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:104-7. Expert Witness Discovery

(a) Any party intending to present evidence under N.J.R.E. 702, 703, or 705 shall disclose the information described in R. 4:17-4(e) without requiring the service of an interrogatory requesting such information.

(b) A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(1) at least 90 days before the date set for trial or for the case to be ready for trial; or

(2) if the evidence is intended solely to contradict or rebut evidence on the same subject matter under N.J.R.E. 702, 703, or 705, within 30 days after the other party's disclosure.

(c) In its initial scheduling order, the court may require any party intending to introduce expert testimony as part of its affirmative case to identify its testifying experts 30 days in advance of the date on which expert disclosures are due.

(d) A party may depose any person who has been identified under R. 4:104-7(a), pursuant to the provisions of R. 4:10-2(d)(2). The deposition may be conducted only after the disclosures required by R. 4:104-7(a) have been made. Such witnesses shall appear for depositions without the necessity of subpoenas.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:104-8. Signature Required; Effect of Signature

(a) Required Signature as Certification. Every disclosure under Rules 4:103-1 and 4:104-7 and every discovery request, response, or objection under Rule 4:104 must be signed by at least one attorney of record in the attorney's own name – or by the party personally, if unrepresented – and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry:

(1) with respect to a disclosure, it is complete and accurate as of the time it is made; and

(2) with respect to a discovery request, response, or objection, it is:

(A) consistent with these rules and warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(B) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(C) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(b) Failure to Sign. Other parties have no duty to act on an unsigned disclosure, request, response, or objection, and the court must strike such submission unless a signature is promptly supplied after the omission is called to the attention of the submitting attorney or party.

(c) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, on motion or sua sponte, may impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:104-9. Sanctions for Failure To Make Discovery

(a) R. 4:23-1 through R. 4:23-5 shall apply to determining whether, when, and how a party may be sanctioned for failing to provide discovery, except that applications for the imposition of discovery sanctions shall be subject to the procedures set forth in R. 4:105-4.

(b) Any motion to be brought pursuant to R. 4:23-5 shall be considered a discovery motion subject to R. 4:105-4.

N**ote**: Adopted July 27, 2018 to be effective September 1, 2018.