

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
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; Continuing Obligation; Failure to Respond; Objections; Motions.

(1) Procedure for Request. 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.

(2) Procedure for Response. 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 shall be made by the party upon whom it is served if an individual, or, if a governmental, commercial, or charitable entity, by an officer or agent thereof. The person making the response shall swear or certify in the form prescribed by paragraph (c) of this rule that it is complete and accurate based on personal knowledge and/or upon information if provided by others, whose identity and source of knowledge shall be disclosed. The written response shall be served on the requesting party and a copy on all other parties. The written response shall either include the requested documents or other material or state, with respect to each item or category, that inspection and related activities will be permitted as requested. If the written response

provides documents to the requesting party, those documents shall be provided to or made available to any other party upon request.

Unless the parties otherwise agree, or the court otherwise orders:

(A) 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;

(B) 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

(C) a party need not produce the same electronically stored information in more than one form.

(3) Continuing Obligation. 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, a supplemental written response and production of such documents, as appropriate, shall be served promptly.

(4) Objections; Failure to Respond; Motions. General objections to the request as a whole are not permitted and shall be disregarded by the court and adverse parties. The party upon whom the request is served may, however, object to a request on specific grounds and, if on the ground of privilege or accessibility of electronically stored information, the objection shall be made in accordance with *R. 4:10-2(e)* and *(f)* respectively. The requesting party 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. The provisions of *R. 4:23-1(c)* apply to the award of expenses incurred in relation to motions made pursuant to this rule.

(c) Certification or Affidavit of Completeness. The person responding to the request shall submit with the response a certification stating or affidavit averring as follows:

I hereby certify (or aver) that I have reviewed the document production request and that I have made or caused to be made a good faith search for documents responsive to the request. I further certify (or aver) that as of this date, to the best of my knowledge and information, the production is complete and accurate based on () my personal knowledge and/or () information provided by others. I acknowledge my continuing obligation to make a good faith effort to identify additional documents that are responsive to the request and to promptly serve a supplemental written response and production of such documents, as appropriate, as I become aware of them. The

following is a list of the identity and source of knowledge of those who provided information to me:

(d) 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.

Official Comment (August 1, 2016)

Parties may request metadata in electronic documents. Metadata is embedded information in electronic documents that is generally hidden from view in a printed copy of a document. It is generated when documents are created or revised on a computer. Metadata may reflect such information as the author of a document, the date or dates on which the document was revised, tracked revisions to the document, and comments inserted in the margins. It may also reflect information necessary to access, understand, search, and display the contents of documents created in spreadsheet, database, and similar applications.

Litigants and lawyers should be aware that metadata may be present in electronic documents produced in discovery. Parties are encouraged to meet and confer about the format in which they will produce electronic documents. Parties also should seek agreement on whether the receiving party may review unrequested metadata in electronic documents. For example, the parties may agree not to “strip” documents of metadata (due to spoliation concerns), or to refrain from reviewing metadata in electronic documents when metadata has not been specifically requested in discovery. If lawyers are permitted to review metadata in electronic documents submitted in discovery, they should agree on the manner in which metadata will be addressed in a privilege log.

The selection of the format of electronic documents sought in discovery can determine the amount of metadata to be produced, and significantly affect the cost of discovery. Those considerations should be evaluated in light of the scope and complexity of the case. The burden on the producing party caused by the selection of format of documents sought in discovery should be considered and appropriately balanced against the requesting party’s need for metadata. Judges, when reviewing a motion to compel discovery or for a protective order, should also consider the limitations of Rule 4:10-2(g).

If electronic documents are provided in response to a discovery request, the receiving lawyer should consider his or her obligations under Rule of Professional Conduct 4.4(b) before reviewing metadata.

Parties have an obligation to preserve metadata in electronic documents, subject to a standard of reasonableness.

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; paragraph (b) caption amended, paragraph (b) text reallocated and captioned as subparagraphs (b)(1) and (b)(2), subparagraph (b)(2) amended, new subparagraphs (b)(3) and (b)(4) adopted, former paragraph (c) redesignated as paragraph (d), and new paragraph (c) caption and text adopted July 23, 2010 to be effective September 1, 2010; new Official Comment adopted August 1, 2016 to be effective September 1, 2016.

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.