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| Civil - Law  Foreign Litigation  Revised March 2015 |
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| **Information for Attorneys on the Procedure to Pursue Discovery of a New Jersey Resident for Use in Litigation in the United States District Courts or Another Country**  **(Superior Court of New Jersey - Law Division - Civil Part)** |
| **Purpose of This Packet**  This package provides information for an attorney not authorized to practice in New Jersey on the procedure for directing a New Jersey resident to comply with discovery requests for use in litigation in a federal District Court, the District of Columbia, Puerto Rico, the United States Virgin Islands, territories of the United States, or a foreign country. This packet should not be used in connection with litigation in the 49 states. Consult  *R.* 4:11(b) for the state court process.  Where foreign litigation requires a non-party witness’s 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, a party may request to employ the power of New Jersey’s courts to aid foreign litigation in connection with proceedings in federal District Court in the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, territories of the United States, or in connection with proceedings in any foreign country. New Jersey’s Court Rules provide a procedure to issue the necessary process through an *ex-parte* application.  An attorney authorized to practice in New Jersey may apply to the Superior Court *ex parte* with a pleading designated “Petition Pursuant to *R.* 4:11-4(a)." 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 discovery in another jurisdiction. The attorney will file the petition, a proposed form of order, a proposed subpoena 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. The attorney must also include a Commission, Letters Rogatory or other similar judicial certificate issued in the forum jurisdiction. |
| 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.gov](https://njcourts.gov). 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 attorney in litigation in another jurisdiction.**

**Step 1: Review and comply with the requirements of the forum jurisdiction to pursue discovery in another jurisdiction.**

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

**Step 2: Retain an attorney authorized to practice in New Jersey 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 attorney authorized to practice in New Jersey will file with the Superior Court, Law Division - Civil Part, 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 attorney authorized to practice in New Jersey serve the subpoena or notice in lieu of subpoena.**

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

**Note**: Counsel should consult the forum jurisdiction’s court rules concerning the need to serve the New Jersey witness with a notice of a deposition or a judicial subpoena from the forum jurisdiction. 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 counsel authorized to practice in New Jersey is ultimately responsible for the content of the pleadings filed and, therefore, counsel must tailor any pleading to the facts, circumstances and New Jersey statutes and court rules then in effect.

**References:**

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| 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* 1:43 | Filing and Other Fees Established Pursuant to *N.J.S.A*. 2B:1-7 |
| 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 |

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| **Plaintiff or Filing Attorney Information:** | | | | | | | | | | | | | | | |
| Name: |  | | | | | |  | | | | | | | | |
| NJ Attorney ID Number: | | | |  | | |  | | | | | | | | |
| Address: | |  | | | | |  | | | | | | | | |
|  | |  | | | | |  | | | | | | | | |
| Telephone Number: | | |  | |  | | | | | | | | | | |
|  | | | | | |  | |  | Superior Court of New Jersey | | | | | | |
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|  | | | | | |  | |  | Docket No. |  | | | |  | |
|  | | | | | |  | |  | **Civil Action**  **Ex-Parte Petition for Issuance of Subpoena Pursuant to Court Rule 4:11-4(a)** | | | | | | |
| I/M/O Application for the Issuance of a Subpoena to | | | | | |  | |  |
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Petitioner , applying for the authority to issue a *Rule* 4:11-4(a) 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 jurisdiction of , captioned , plaintiff(s), v. , defendant(s), bearing docket number .
2. A Commission [Letters Rogatory] was issued out of the Court, 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(a) authorizing that a subpoena be issued to , at the aforementioned address requiring said individual to appear at       o’clock on , 20 , at the office of , located at  
    , New Jersey *[for taking a deposition on oral testimony]* *[to produce the following things or documents:* .] The deposition on oral testimony shall continue from day to day until completed.
4. Based on my conversations with , [out-of-state attorney] I understand the relevant facts are:

a. On or about , 20 , a motion was made in the aforementioned litigation in the jurisdiction 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

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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.

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| 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.

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| Dated: |  |  | Signature: | |  |
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| **Plaintiff or Filing Attorney Information:** | | | | | | | | | | | | | | | |
| Name: |  | | | | | |  | | | | | | | | |
| NJ Attorney ID Number: | | | |  | | |  | | | | | | | | |
| Address: | |  | | | | |  | | | | | | | | |
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| Telephone Number: | | |  | |  | | | | | | | | | | |
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|  | | | | | |  | |  | Docket No. |  | | | |  | |
|  | | | | | |  | |  | **Civil Action**  **Order Pursuant to Court Rule 4:11-4(a)** | | | | | | |
| I/M/O Application for the Issuance of a Subpoena to | | | | | |  | |  |
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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   
 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 , 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] [extend the time to produce things or documents]* by consent without any further application to this court.

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|  | | J.S.C. |