Part IV. RULES GOVERNING CIVIL PRACTICE IN THE SUPERIOR COURT AND SURROGATE'S COURT

CHAPTER XI COMPLEX COMMERCIAL & COMPLEX CONSTRUCTION MATTERS

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Rule 4:102 SCOPE, COGNIZABILITY, AND ADMINISTRATION

Rule 4:102-1. Scope and Applicability of Rules

The rules in Part IX govern the practice and procedure in cases included in the Complex Business Litigation Program (the CBLP) heretofore established by the New Jersey Supreme Court.

(a) Absent an express contradictory rule contained in this Part, the Rules Governing the Courts of the State of New Jersey Parts I and IV shall otherwise apply to any case in the CBLP.

(b) Caption. In addition to the requirements of Rule 1:4-1, once accepted into the CBLP and for as long as the action remains there, actions being conducted in the CBLP shall indicate that they are CBLP matters by inserting the notation "CBLP Action" under the words "Civil Action."

(c) Filings. Unless otherwise noted, all filings in CBLP matters should be made in accordance with the Rules governing filing in the Superior Court, Law Division.

Commentary

The basic concepts in this Rule come from the Supreme Court's directive establishing the Complex Business Litigation Program (CBLP). The overall goals of these proposed rules are to provide better case management, more predictability, and greater efficiencies in the conduct of business litigation in the Superior Court, all aimed at increasing the voluntary use of the Complex Business Litigation Program by members of the Bar and their clients. The three biggest impediments to those goals in the current Rules of Court lie in their approach to case management, discovery, and motion practice. In developing new rules for the CBLP, the drafters sought to utilize the existing Rules of Court as much as possible, modifying them where appropriate to achieve the stated goals. Special focus was placed on existing court rules that have proven effective over time, including the Federal Rules of Civil Procedure and the rules of the Delaware and New York business courts.

Rule 4:102-2. Cognizability

(a) The matters presumptively assigned to the CBLP shall be those cases with an amount in controversy of at least $200,000 that are designated either complex commercial (case type 508) or complex construction (case type 513) on the Civil Case Information Statement.

(b) Cases appropriate for the CBLP arise from business or commercial transactions or construction projects that involve potentially significant damages awards. Program cases may have complex or novel factual or legal issues; large numbers of separately represented parties; large numbers of lay and expert witnesses; a substantial amount of documentary evidence, including electronically stored information; or require a substantial amount of time to complete trial.

(c) The CBLP does not include matters that are otherwise handled by General Equity, or matters primarily involving consumers, labor organizations, personal injury, condemnation, or cases in which the government is a party.

Commentary

This information is on the Superior Court website and is included here to increase awareness and understanding of the CBLP.

Rule 4:102-3. Judges Assigned

Judges Assigned. In each county a Superior Court judge shall be designated as the CBLP judge to preside over cases conducted in the CBLP from filing through termination of the action unless the action is removed from the CBLP prior to completion.

Commentary

This information is on the Superior Court website and is included here to increase awareness and understanding of the CBLP.

Rule 4:102-4 Admittance to or Removal from the CBLP

(a) Opt-in/Opt-Out. Parties may file a motion for inclusion in the CBLP where a case is not presumptively assigned to the CBLP but involves complex business related issues and/or the amount in controversy is less than $200,000. Parties may also move for removal from the CBLP on the grounds that the action does not meet the eligibility criteria.

(b) Review of Cases in CBLP. The Assignment Judge or the CBLP judge may conduct an initial review of a case to determine if it is appropriate for the CBLP. The judge may, *sua sponte,* assign it to the CBLP or remove it from the CBLP. If the case is removed from the CBLP it will be reassigned to the appropriate track for case management.

Commentary

This information is on the Superior Court website and is included here to increase awareness and understanding of the CBLP.

Rule 4:103 CASE MANAGEMENT

Rule 4:103-1. General Principles

The CBLP is designed to streamline and expedite service to litigants in complex business litigation. Cases are assigned either to the complex commercial case type or the complex construction case type, and are individually managed by a judge with specialized training on business issues. The Supreme Court established the program, which became effective on Jan. 1, 2015, to resolve complex business, commercial, and construction cases.

Commentary

This information is on the Superior Court website and is included here to increase awareness and understanding of the CBLP.

Rule 4:103-2. Initial Disclosures

(a) Required Disclosures and Signatures.

(1) Initial Disclosure.

(A) In General. Except as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its

possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 4:18 and Rule 4:104-5(a) the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 4:18 and Rule 4:104-5(a), any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) Time for Initial Disclosures—In General. A party must make the initial disclosures at or within 14 days after the parties' Rule 4:103-3(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(C) Time for Initial Disclosures—For Parties Served or Joined Later. A party that is first served or otherwise joined after the Rule 4:103-3(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(D) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(E) Unless the court orders otherwise, all initial disclosures under this Rule must be in writing, signed, and served. The requirements of Rule 4:104-8 shall apply to initial disclosures. The failure to provide compliant initial disclosures may lead to sanctions in the court's discretion.

Commentary

This rule is based on Fed. R. Civ. P. 26(a)(1). Initial disclosures are a useful tool for insuring that all parties will focus on witnesses, documents, damages, and insurance at the outset of litigation. The information provides a sense to the parties and the Court of the scope of the litigation, which enhance early case management, and helps to shape discovery.

Rule 4:103-3. Initial Conference of the Parties

(a) Conference Timing. Except in a proceeding exempted from initial disclosure under Rule 4:103-2(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 4:103-4(b). Such conference shall take place notwithstanding any dispositive motion that may be pending.

(b) Conference Content; Parties' Responsibilities. In conferring, the parties must (1) consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; (2) make or arrange for the disclosures required by Rule 4:103-2(a)(1); (3) discuss any issues about preserving discoverable information; and (4) develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(c) Discovery Plan. A discovery plan must state the parties' views and proposals on:

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 4:103-2(a), including a statement of when initial disclosures were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(3) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(4) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Rule 4:10-2(c);

(5) what changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed; and

(6) any other orders that the court should issue under Rule 4:10-3 or under Rule 4:103-4(b) and (c).

Commentary

This rule is based on Fed. R. Civ. P. 26(f). The initial conference and discovery plan enable the Court to exercise early and effective case management and render litigation, particularly discovery, more predictable and efficient.

Rule 4:103-4. Case Management Conferences and Scheduling Orders

(a) Initial Case Management Conference and Scheduling Order

(1) An initial case management conference must be convened with the parties' attorneys and any unrepresented parties, and thereafter a scheduling order must be issued in the form set forth in Appendix [?].

(2) The scheduling order must be issued as soon as practicable, but absent good cause for delay, within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.

(3) The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions. R. 4:9-1 shall not apply to cases in the CBLP.

(4) The scheduling order may (i) modify the timing of disclosures under Rule 4:103-2(a), (ii) modify the extent of discovery, (iii) provide for disclosure, discovery, or preservation of electronically stored information; (iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements reached under Rule 4:10-2(c); (v) direct that before moving for an order related to discovery, the movant must request a conference with the court; (vi) set dates for pretrial conferences and for trial; and (vii) include other appropriate matters.

(5) The parties may agree to set and/or modify interim deadlines without court approval, provided any such change will not have an impact on the discovery end date.

(b) The court in its discretion may convene additional case management conferences at any time. In connection with any pretrial case management, scheduling, or status conference, other than the final pretrial conference discussed in Rule 4:25, the parties shall abide by the requirements of this Rule.

(c) Attendance and Matters for Consideration at a Pretrial Conference

(1) Attendance. A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) Matters for Consideration at a Pretrial Conference. At any pretrial conference, in addition to the matters set forth in Rule 4:25, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under NJ Rule of Evidence 702;

(E) determining the appropriateness and timing of summary adjudication under Rule 4:56;

(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under Rules 4:10 – 4:19, 4:22;

(G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(H) referring matters to a master;

(I) settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule;

(J) determining the form and content of the pretrial order;

(K) disposing of pending motions;

(L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(M) ordering a separate trial under Rule 4:38-2 of a claim, cross-claim, counterclaim, third-party action, or separate issue;

(N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 4:40-1;

(O) establishing a reasonable limit on the time allowed to present evidence; and

(P) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) Final Pretrial Conference and Orders. All CBLP actions shall be pretried and the requirements of Rule 4:25 shall apply to the final pretrial conference, which should lead to the formulation of a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

Commentary

This rule is based on Fed. R. Civ. P. 16(b) and (c). Case management conferences that focus on the issues listed in this rule result in litigation that is more predictable and efficient for the parties and the Court. Requiring the attendance of attorneys with authority to stipulate, agree to processes and timetables, and discuss settlement ensures that the Court's efforts to manage the case efficiently will not be wasted. Without adequate planning and control at the outset, a complex business lawsuit can take on a life of its own, resulting in prolonged, expensive, and unnecessarily complicated litigation for the parties and the Court.

RULE 4:104. DISCOVERY

4:104-1. General Principles. Except as otherwise provided in this Part IX, 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.

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. 4:103-3, 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 Rule 4:18 requests served before the R. 4:103-3 conference shall be deemed served on the day of the first R. 4:103-3 conference.

Commentary

This rule is based on Fed. R. Civ. P. 26(d). The intent of the rule is to avoid imposing discovery obligations on parties until they have conducted their initial R. 4:103-3 conference and formulated a coordinated discovery plan. Recognizing that the parties' initial conference may be more productive if each party knows generally what type of discovery the other will seek during the course of the litigation, the rule allows, but does not require, a party to deliver a document request under R. 4:18 before the parties' initial conference, so long as it is delivered more than 35 days after service of the summons and complaint. If a document request is delivered before the parties' initial R. 4:103-3 conference, it will not be deemed "served" until the initial R. 4:103-3 conference occurs. Thus, the receiving party's R. 4:18-1(b)(2) written response will presumptively be due by the later of 35 days after the initial R. 4:103-3 conference or 50 days after service of the summons and complaint.

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, or by defendants, or by third-party defendants, shall 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.

Commentary

This rule is based on Rule 11-d(a) of the Rules of the Commercial Division of the Supreme Court of New York and Fed. R. Civ. P. 30(d)(1) and (2). The rule is intended to streamline the use of depositions as a discovery device by creating presumptive limits on the number and duration of depositions. The parties are free to agree to more or longer depositions than is provided in this rule. Subsection (b) explains how to apply the rule's limitations in the context of a R. 4:14-2

corporate representative deposition, where a party may be required to produce several deposition witnesses in response to a single deposition notice.

4:104-4. Interrogatories to Parties

(a) R. 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.

Commentary

This rule is based on Rule 11-a(a) of the Rules of the Commercial Division of the Supreme Court of New York and Fed. R. Civ. P. 33(d)(1) and (2). Interrogatories in complex business litigation tend to be inefficient discovery devices and, intentionally or not, often impose disproportionate discovery burdens on the responding litigants. This rule, therefore, imposes a presumptive limit of 15 interrogatories addressed to each adverse party, which may be increased by agreement among the parties or by court order. Given the presumptive limit on the number of interrogatories, the time for responding to interrogatories is presumptively reduced from 60 days to 30 days. That deadline can also be extended by agreement among the parties or by court order. Motions concerning the sufficiency of interrogatory responses shall be governed by the provisions in Rule 4:105, as they may be modified by a case management order.

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

(a) 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: (1) presume that the lost information was unfavorable to the party; (2) instruct the jury that it may or must presume the information was unfavorable to the party; or (3) 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.

Commentary

This rule is based on Rules 11-b and -e of the Rules of the Commercial Division of the Supreme Court of New York; Fed. R. Civ. P. 37(e); and the E-Discovery Plan Guidelines for the Complex Commercial Litigation Division of the Superior Court of the State of Delaware.

Subsection (a) is intended to add transparency to the document production process and to reduce the frequency of disputes over objections that have little or no bearing on the quality or quantity of the discovery produced. The rule requires the responding party to clarify whether any documents or information are being withheld on account of an objection to a discovery request. It also requires a responding party to disclose any limitations it intends to use in its collection efforts, such as date restrictions, custodian restrictions, or the use of key-word searches to collect potentially responsive materials.

Subsection (b) adopts the recent innovation in the Federal Rules of Civil Procedure regarding the imposition of sanctions for the failure to preserve electronically stored information. The rule is intended to provide uniformity to the issuance of judicial sanctions for the failure to preserve electronically stored information so that organizations with large amounts of electronic data can anticipate and therefore better manage the risks associated with preserving the data.

Subsection (c) is intended to streamline the process of preparing privilege logs. In complex business litigation involving large amounts of discovery, the parties are often required to devote considerable resources to the preparation of privilege logs. This rule encourages the parties to adopt a category-by-category approach, instead of a document-by-document approach, in preparing privilege logs, thus limiting the number of entries on a log.

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 [?] to these Rules.

(b) In the event the parties wish to deviate from the form set forth in Appendix [?], 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.

Commentary

This rule is based on Rules 11-g of the Rules of the Commercial Division of the Supreme Court of New York and Appendix S to the Local Civil Rules for the United States District Court for the District of New Jersey. Discovery confidentiality orders are routinely used in complex business litigation. This rule is intended to streamline the parties' agreement to a form of a confidentiality order by providing a default order that the parties can adopt for their case or modify as they deem appropriate.

4:104-7. Expert Witness Discovery

(a) Any party intending to present evidence under New Jersey Rules of Evidence 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 Evidence Rules 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.

Commentary

This rule is based on Fed. R. Civ. P. 26(a)(2)(D) and (b)(4)(A) and the Protocol for Expert Discovery for the Complex Commercial Litigation Division of the Superior Court of the State of Delaware. The rule is intended to streamline expert discovery by requiring automatic disclosures regarding a party's anticipated expert testimony.

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

(a) Every disclosure under R. 4:103-2 and 4:104-7 and every discovery request, response, or objection 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 nonfrivolous 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 issues 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 until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(c) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, on motion or on its own, must 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.

Commentary

This rule is based on Fed. R. Civ. P. 26(g). The rule is intended to help ensure that discovery requests, objections, and responses are made in good faith and to impose sanctions for violation of the rule.

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

(a) R. 4:23-1 to 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.

Commentary

This rule is intended to clarify that, while the standards set forth in R. 4:23-1 to R. 4:23-5 for imposing sanctions for discovery violations continue to apply to cases in the Complex Business Litigation Program, the procedure for obtaining such sanctions shall be governed by R. 4:105.

Rule 4:105. Motions

R. 4:105-1. General Principles

After a case has been assigned or designated to the CCBLP the parties shall seek rulings on all motions in the case only from the judge assigned to the case and not from other judges unless otherwise ordered by the court.

Commentary

The goal of these motion rules is to streamline and facilitate the motion practice in complex business cases. The drafters took into consideration the issues and concerns of judges assigned to the CBLP. The drafters then surveyed the landscape of other courts that have implemented specific rules to be used in business courts. In the area of motion practice the best models found to address the concerns of the judges assigned to the CBLP were from New York, North Carolina, and the Local Federal Rules in New Jersey.

R. 4:105-2. Motions to be Addressed in the Case Management Order

The initial case management order and any amendments thereto may include provisions agreed to by the parties with the approval of the court regarding the procedures for the filing of and the disposition of motions. The court may include provisions regarding sanctions for non-compliance with these rules.

Commentary

The objective of these rules is to provide more case management to benefit the court and the litigants. The initial case management order is envisioned to be a key document to further that purpose. This rule provides that the initial case management order may address the filing of and the disposition of motions to which the parties agree and the court approves. This type of provision allows for the parties and the court to set forth procedures that may be beneficial to the specific types of cases and issues presented.

R. 4:105-3. Extensions of Time for Initial Dispositive Motions

(a) Absent an Order of the court, the hearing date for a dispositive motion may not be adjourned if a trial date has been set.

(b) Subject to (a), the original motion day of an initial dispositive motion may be adjourned once by a party opposing the motion, without the consent of the moving party, the court, or the clerk.

(c) To obtain the automatic extension a party first must contact the CBLP judge to obtain a new motion date to be set by the court. Thereafter the party must file with the clerk, and serve upon all other parties and the court, a letter stating that the originally noticed motion day has not previously been extended or adjourned and invoking the provisions of this rule prior to the date on which opposition papers would otherwise be due under the rules. That letter shall set forth the new motion day, which shall be provided by the CBLP judge.

(d) All parties opposing the motion shall timely file their opposition papers in accordance with the rules prior to the new motion day, and the moving party shall timely file its reply papers in accordance with the rules prior to the new motion day.

(e) No other extension of the time limits shall be permitted without an Order of the court, and any application for such an extension shall advise the court whether other parties have or have not consented to such request.

Commentary

This provision is based on the Local Federal Rules in the United States District Court for the District of New Jersey. This provision is intended to address the issue of the complexity of initial motions and the need for ease and flexibility of litigants to seek and to obtain extensions. The Local Federal Rules have been effective in this regard. This rule eliminates the need for an adversary's consent for the initial adjournment.

R. 4:105-4. Advance Notice of Discovery Motions

(a) In order to permit the court the opportunity to resolve discovery issues before

motion practice ensues and to control its calendar in the context of the discovery and trial schedule, pre-motion conferences in accordance herewith must be held.

(b) The parties are required to meet and confer (in-person or by phone) before bringing any discovery issue to the attention of the court.

(c) Prior to filing a discovery motion, counsel for the moving party shall advise the court in writing (no more than five pages), on notice to opposing counsel, outlining the issue(s) in dispute and the party's position on each such issue and requesting a telephone conference.

(d) Within three business days of receipt of the letter from counsel for the movant, any party opposing the relief shall submit a letter to the court (no more than five pages), on notice to opposing counsel, outlining the issue(s) in dispute and the party's position on each such issue.

(e) Upon review of the motion notice and response letter(s), the court will schedule a telephone or in-court conference with counsel. At the discretion of the court, the conference may be held on the record. Counsel fully familiar with the matter and with authority to bind their client must be available to participate in the conference. The unavailability of counsel for the scheduled conference, except for good cause shown, may result in granting of the application without opposition and/or the imposition of sanctions.

(f) If the court resolves the matter during the conference, an order consistent with such resolution may be issued or counsel will be directed to forward a letter confirming the resolution to be "so ordered."

(g) If the court does not resolve the matter during the conference, the court shall set a briefing schedule for the motion. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

(h) Where a motion must be made within a certain time pursuant to the rules or court order, the submission of a motion notice letter, as provided in this rule, within the prescribed time shall be deemed the timely making of the motion. This subdivision shall not be construed to extend any jurisdictional limitations period.

Commentary

This provision is modeled on Rule 24 of the Rules of the Commercial Division of the Supreme Court of New York. The intent of the rule is to try to eliminate or reduce discovery motions by providing an alternative procedure to address discovery disputes. The rule requires that the parties first "meet and confer" to try to resolve the issues. It then gives the court an opportunity to resolve the issues before a discovery motion can be made. The rule directs that counsel submit a letter, no longer than five pages, describing the reasons for the motion and

providing for the scheduling of either a telephone or in-court conference before the motion can be made. The rule also provides a process to resolve the dispute if not resolved by the court conference.

R. 4:105-5. Process Applicable to Summary Judgment Motions

This rule applies to any motion brought pursuant to Rule 4:46, which shall continue to apply to the extent not inconsistent with this Rule.

(a) The parties are to confer and agree on a briefing schedule for dispositive motions, including cross-motions.

(b) The moving party will prepare its notice of motion, brief, affidavits, other supporting documentation and statement of material facts. These papers will be sent to all adversaries and the original filed with the clerk with no motion date designated.

(c) An original of all opposition papers are then to be filed with the clerk in accordance with the agreed-upon schedule of the parties. Two copies of all opposition papers are to be served on the movant and all other parties.

(d) An original of all reply papers are then to be filed with the clerk in accordance with the agreed-upon schedule of the parties. Copies of all reply papers are to be served on all other parties.

(e) After the motion has been fully briefed, the movant shall file a letter with the clerk, and serve a copy on the CBLP judge and all other parties, certifying that the matter is fully briefed and asking the clerk to place the motion on the court's motion calendar for a motion date within 30 days of the submission date. The motion return date may be changed by the court, and if the court changes the motion date, it shall notify the parties. The clerk shall forward all original filed motion papers to the court. The movant shall provide one full set of all motion papers as a courtesy copy to the court, listing in the cover letter all papers submitted.

(f) If any party receiving a motion for summary judgment seeks to file a cross-motion for summary judgment, the cross-movant shall confer with the movant to agree on a revised briefing schedule as appropriate. The cross-movant thereafter shall file and serve a single brief consisting of its opposition to the original motion and its moving brief on the cross-motion. The original moving party shall then file and serve a single brief consisting of its reply on the original motion and its opposition to the cross-motion. The cross-movant shall then file and serve a reply brief limited to the issues on the cross-motion. After both the motion and cross-motion have been fully briefed, the original moving party shall file a letter with the clerk, and serve a copy on the CBLP judge and all other parties, certifying that the matters are fully briefed and asking the clerk to place the motions on the court's motion calendar for a motion date within 30 days of the submission date. The motion return date may be changed by the court, and if the court changes the

motion date, it shall notify the parties. The clerk shall forward all original filed motion and cross-motion papers to the court. The original moving party shall collect all papers submitted in support of and in opposition to both the original motion and the cross-motion, and shall provide one full set of all motion papers as a courtesy copy to the court, listing in the cover letter all papers submitted.

Commentary

This provision is based on the old New Jersey Federal Local Rule set forth in Appendix N of the Local Rules. The purpose of this rule is to address the logistical problems of complex and voluminous motions for summary judgment. Practitioners and judges are often confronted by requests to adjourn motions for purposes of providing adequate time for briefing, and ultimately, the court's review and consideration. This rule would allow the parties to control the briefing schedule and to not file the motion on the court's calendar until the motion has been fully briefed. The rule further provides that once fully briefed and submitted, the motion will be placed on the motion calendar within 30 days of the submission date, which date is subject to change by the court.

R. 4:105-6. Length of Papers.

Unless otherwise permitted by the court: (i) briefs or memoranda of law in support of and in opposition to motions shall be limited to 25 pages each; (ii) briefs or memoranda in reply shall be no more than 15 pages and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief; (iii) affidavits/certifications, exclusive of exhibits, shall be limited to 25 pages.

Commentary

This provision is modeled on Rule 17 of the Rules of the Commercial Division of the Supreme Court of New York. The intent of the rule is in accordance with the trend in recent rule amendments to impose some limitation on the lengths of briefs and affidavits. The rule provides for relief from these page restrictions by permission from the court, providing flexibility for litigants and counsel as appropriate.

R. 4:105-7. Sur-Reply and Post-Submission Papers

Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read

or considered. Opposing counsel who receives a copy of materials submitted in violation of this rule shall not respond in kind unless instructed by the court.

Commentary

This provision is modeled on the Rule 18 of the Rules of the Commercial Division of the Supreme Court of New York. The intent of the rule is to protect against the unauthorized filing of sur-reply papers. The rule also provides clarity for the recipient of the unauthorized sur-reply by making it clear that the unauthorized filing will not be read or considered by the court. Additionally, no response shall be filed unless the court authorizes it.

R. 4:105-8. Joint Motion Submissions

A party who elects to join in any pending motion or opposition shall do so by timely submitting a letter stating that the party is joining in the relief sought and relying upon the papers submitted by the movant or opponent of the motion.

Commentary

The purpose of the rule is to simplify motion practice for parties seeking to join in any already filed motion or opposition papers.

R. 4:105-9. Motions Not Requiring Briefs.

(a) No brief is required by either movant or respondent, unless otherwise directed by the court, with respect to the following motions: for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed or extended by previous orders; to continue a pre-trial conference, hearing, or the trial of an action; to add parties; to amend the pleadings; to file supplemental pleadings; for substitution of parties; or for pro hac vice admission of counsel who are not members of the New Jersey State Bar.

(b) The above motions, which are not required to be accompanied by a brief, shall state good cause therefor and cite any applicable rule, statute, or other authority justifying the relief sought. These motions shall be accompanied by a proposed order.

Commentary

This rule is modeled after North Carolina Business Court Rule 15.10. The purpose of the rule is to simplify motion practice and reduce unnecessary paperwork by making clear that certain categories of motions will not require briefs unless the court directs otherwise.

Appendix [?] (Form Confidentiality Order for CBLP Cases)

Plaintiff, vs. Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, _____COUNTY DOCKET NO. _____ CIVIL ACTION CBLP ACTION DISCOVERY CONFIDENTIALITY ORDER

It appearing that discovery in the above-captioned action is likely to involve the disclosure of confidential information, it is ORDERED as follows:

1. Any party to this litigation and any third-party shall have the right to designate as "Confidential" and subject to this Order any information, document, or thing, or portion of any document or thing: (a) that contains trade secrets, competitively sensitive technical, marketing, financial, sales or other confidential business information, or (b) that contains private or confidential personal information, or (c) that contains information received in confidence from third parties, or (d) which the producing party otherwise believes in good faith to be entitled to protection under R. 4:10-3(g). Any party to this litigation or any third party covered by this Order, who produces or discloses any Confidential material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: "CONFIDENTIAL" or "CONFIDENTIAL — SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER" (hereinafter "Confidential").

2. [OPTIONAL: Any party to this litigation and any third-party shall have the right to designate as "Attorneys' Eyes Only" and subject to this Order any information, document, or thing, or portion of any document or thing that contains highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm to an individual or to the business or competitive position of the designating party. Any party to this litigation or any third party who is covered by this Order, who produces or discloses any Attorneys' Eyes Only material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend:

"ATTORNEYS' EYES ONLY" or "ATTORNEYS' EYES ONLY - SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER" (hereinafter "Attorneys' Eyes Only").]

3. All Confidential material [and Attorneys' Eyes Only material] shall be used by the receiving party solely for purposes of the prosecution or defense of this action, shall not be used by the receiving party for any business, commercial, competitive, personal or other purpose, and shall not be disclosed by the receiving party to anyone other than those set forth in Paragraphs 4 or 5, unless and until the restrictions herein are removed either by written agreement of counsel for the parties, or by Order of the Court. It is, however, understood that counsel for a party may give advice and opinions to his or her client solely relating to the above-captioned action based on his or her evaluation of Confidential material, provided that such advice and opinions shall not reveal the content of such Confidential material except by prior written agreement of counsel for the parties, or by Order of the Court.

4. Confidential material and the contents of Confidential material may be disclosed only to the following individuals under the following conditions:

a. Outside counsel (herein defined as any attorney at the parties' outside law firms) and relevant in-house counsel for the parties;

b. Outside experts or consultants retained by outside counsel for purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A;

c. Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;

d. The Court and court personnel;

e. Any deponent may be shown or examined on any information, document or thing designated Confidential if it appears that the witness authored or received a copy of it, was involved in the subject matter described therein or is employed by the party who produced the information, document or thing, or if the producing party consents to such disclosure;

f. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A; and

g. The parties. In the case of parties that are corporations or other business entities, "party" shall mean executives who are required to participate in decisions with reference to this lawsuit.

5. Material produced and marked as Attorneys' Eyes Only and the contents of such material may be disclosed only to the following individuals under the following conditions:

a. Outside counsel (herein defined as any attorney at the parties' outside law firms) and relevant in-house counsel for the parties;

b. Outside experts or consultants retained by outside counsel for purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A;

c. Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;

d. The Court and court personnel;

e. Any deponent may be shown or examined on any information, document or thing designated Confidential if it appears that the witness authored or received a copy of it, was involved in the subject matter described therein or is employed by the party who produced the information, document or thing, or if the producing party consents to such disclosure;

f. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A; and

6. With respect to any depositions that involve a disclosure of Confidential material or Attorneys' Eyes Only material of a party to this action, such party shall have until ten (10) days after receipt of the deposition transcript within which to inform all other parties that portions of the transcript are to be designated Confidential, which period may be extended by agreement of the parties. No such deposition transcript shall be disclosed to any individual other than the individuals described in Paragraph 4(a), (b), (c), (d) and (f) above and the deponent during these ten (10) days, and no individual attending such a deposition shall disclose the contents of the deposition to any individual other than those described in Paragraph 4(a), (b), (c), (d) and (f) above during said ten (10) days. Upon being informed that certain portions of a deposition are to be designated as Confidential, all parties shall immediately cause each copy of the transcript in its custody or control to be appropriately marked and limit disclosure of that transcript in accordance with Paragraphs 3 and 4.

7. If counsel for a party receiving documents or information designated as Confidential [or Attorneys' Eyes Only] hereunder objects to such designation of any or all of such items, the following procedure shall apply:

a. Counsel for the objecting party shall serve on the designating party or third party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating party or third party shall respond in writing to such objection within ten (10) days, and shall state with particularity the grounds for asserting that the document or information is Confidential [or Attorneys' Eyes Only]. If no timely written response is made to the objection, the challenged designation will be deemed to be void. If the designating party or nonparty makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith in an effort to resolve the dispute.

b. If a dispute as to a Confidential [or Attorneys' Eyes Only] designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the Court initially by telephone or letter before filing a formal motion for an order regarding the challenged designation. The document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute.

8. If the need arises during trial or at any hearing before the Court for any party to disclose Confidential [or Attorneys' Eyes Only] information, it may do so only after giving notice to the producing party and as directed by the Court.

9. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential material or Attorneys' Eyes Only material that should have been designated as such, regardless of whether the information, document or thing was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information, document or thing disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all parties to whom the material was disclosed that the material should have been designated Confidential [or Attorneys' Eyes Only] within a reasonable time after disclosure. Such notice shall constitute a designation of the information, document or thing as Confidential or [Attorneys' Eyes Only] under this Discovery Confidentiality Order.

10. No information that is in the public domain or which is already known by the receiving party through proper means or which is or becomes available to a party from a source other than the party asserting confidentiality, rightfully in possession of such information on a non-confidential basis, shall be deemed or considered to be Confidential material [or Attorneys' Eyes Only] material under this Discovery Confidentiality Order.

11. This Discovery Confidentiality Order shall not deprive any party of its right to object to discovery by any other party or on any otherwise permitted ground. This Discovery Confidentiality Order is being entered without prejudice to the right of any party to move the Court for modification or for relief from any of its terms.

12. This Discovery Confidentiality Order shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties filed with the Court.

13. Upon final conclusion of this litigation, each party or other individual subject to the terms hereof shall be under an obligation to assemble and to return to the originating source all originals and unmarked copies of documents and things containing Confidential material [or Attorneys' Eyes Only material] and to destroy, should such source so request, all copies of Confidential material that contain and/or constitute attorney work product as well as excerpts, summaries and digests revealing Confidential material[or Attorneys' Eyes Only material]; provided, however, that counsel may retain complete copies of all transcripts and pleadings including any exhibits attached thereto for archival purposes, subject to the provisions of this Discovery Confidentiality Order. To the extent a party requests the return of Confidential material [or Attorneys' Eyes Only material] from the Court after the final conclusion of the litigation, including the exhaustion of all appeals therefrom and all related proceedings, the party shall file a motion seeking such relief.

IT IS SO ORDERED.

Dated: _____

_____

_____, J.S.C.

Plaintiff, vs. Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, _____COUNTY DOCKET NO. _____ AGREEMENT TO BE BOUND BY DISCOVERY CONFIDENTIALITY ORDER

I, _____, being duly sworn, state that:

1. My address is _____

2. My present employer is _____ and the address of my present employment is _____.

3. My present occupation or job description is _____

4. I have carefully read and understood the provisions of the Discovery Confidentiality Order in this case signed by the Court, and I will comply with all provisions of the Discovery Confidentiality Order.

5. I will hold in confidence and not disclose to anyone not qualified under the Discovery Confidentiality Order any Confidential material [or Attorneys' Eyes Only material] or any words, summaries, abstracts, or indices of Confidential material [or Attorneys' Eyes Only material] disclosed to me.

6. I will limit use of Confidential material [and Attorneys' Eyes Only material] disclosed to me solely for purpose of this action.

7. No later than the final conclusion of the case, I will return all Confidential material [and Attorneys' Eyes Only material], including summaries, abstracts, and indices thereof, which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained.

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 wilfully false, I am subject to punishment.

Dated:_____ _____

[Name]