



Changes To New Jersey's Court Rule Governing Non-Party Discovery For Proceedings In Other States

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New Jersey Court Rule 4:11-4 was amended, effective September 1, 2014, to adopt the Uniform Interstate Deposition and Discovery Act ("UIDDA"), which concerns discovery of non-parties for proceedings in other states. The UIDDA was recommended for adoption in all states by the National Conference of Commissioners on Uniform State Laws, now the Uniform Law Commission, in 2007. It has now been adopted in most states, including New York and Pennsylvania. The amendment does not change the procedure for seeking discovery for proceedings in federal courts or other countries, with respect to which the Rule remains unchanged.

The amendment makes it easier to issue subpoenas for either testimony or document discovery, eliminates the need to retain New Jersey counsel to do so, clarifies that the New Jersey Court Rules and law govern the taking of the discovery and sets forth specific information and notices that must be sent with the subpoena. As previously, the amended Rule is not limited to discovery for use in court actions only, but permits issuance of a subpoena in aid of any "proceeding" in another state provided the discovery is sought "pursuant to the laws" of that state.

Before the amendment, to obtain such a subpoena a litigant needed to file a petition asking the Superior Court to order the subpoena's issuance, which generally required retention of New Jersey counsel. In support of the petition, the applicant would typically file a commission or letters rogatory from the forum court authorizing the subpoena. Under the amended Rule, neither a petition nor retention of New Jersey counsel is required. Instead, a foreign subpoena and a New Jersey subpoena may be sent to a New Jersey-licensed attorney or "to the clerk of the court in the county" where the discovery is sought, and the foreign subpoena filed with the Court, opening a miscellaneous matter. Because the Rule provides that "a request for the issuance of a subpoena does not

constitute an appearance in the courts of this State,” an attorney not licensed in New Jersey can request its issuance.

Since the Court can issue the subpoena, and an out-of-state attorney can take a deposition in New Jersey, under Rule 1:21-1(b), without making “an appearance” in this State, a litigant in a proceeding in another state can now issue a subpoena and seek non-party discovery in New Jersey without retaining New Jersey counsel. Nonetheless, out-of-state litigants may prefer to engage New Jersey counsel to issue the subpoena (which New Jersey lawyers can do) in order to retain greater control over the timing of issuance and the benefit of that counsel's familiarity with this State's law and Court Rules, which govern discovery under the amended Rule.

The amended Rule provides that “discovery taken pursuant to the rule shall be conducted consistent with and subject to the limitations” of the New Jersey Court Rules “and all other applicable laws of this State.” Similarly, applications to enforce, quash or modify the subpoena, issue protective orders, and to resolve disputes arising under the subpoena are governed by this State's Court Rules, and an attorney or party requesting issuance of the subpoena is subject to those Rules, “including the Rules of Professional Conduct.”

Finally, Rule 4:11-5, which concerns issuance of a subpoena in another jurisdiction to obtain discovery for a New Jersey lawsuit, was also amended, effective September 1, 2014, in light of the adoption by most other states of the UIDDA. See Pressler & Verniero, Current N.J. Court Rules, Comment R. 4:11-4 and R. 4:11-5 (GANN). The amendment adds a new subsection (c), which permits a litigant to issue a subpoena to a person in another state “pursuant to a subpoena issued to the person to be deposed in accordance with R. 4:14-7 [which covers a number of subjects concerning the conduct and scope of discovery under a subpoena] and in accordance with the procedures authorized by the foreign state.” Provided that state has also adopted the UIDDA in some form, issuance of a subpoena there would be similar to that under R. 4:11-4.

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