



# VERDICT

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## Uniform Interstate Depositions and Discovery Act: Making Life Easier



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Gone are the days of Petitions for the Issuance of Letters Rogatory and Commissions . . . for the most part. In 2007, the Uniform Law Commission of the National Conference of Commissioners on Uniform State Laws introduced the “Uniform Interstate Depositions and Discovery Act,” (UIDDA) a much-welcomed tool that has eased the pain associated with conducting out-of-state discovery. The UIDDA was designed to be simple, efficient, and cost effective, by eliminating the need for obtaining a commission, filing a petition for the issuance of letters rogatory, filing a miscellaneous action, or obtaining local counsel to get a foreign subpoena. There is, of course, a small catch: not all states and U.S. territories have adopted the UIDDA. As of the date of this article, Wyoming, Nebraska, Missouri, Arkansas,

Texas, Florida, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and Puerto Rico have yet to codify the UIDDA or some version of it. Oklahoma introduced its version of the UIDDA in 2017 (Senate Bill 368) and it is pending approval.

While some states still require extra work and headache to obtain a foreign subpoena, states like New Jersey have amended their own rules to make the process as simple and convenient as possible. As of September 1, 2016, New Jersey Court Rule 4:11-4(b) was amended to reflect its adoption of the UIDDA and has now negated the need to file a miscellaneous action to obtain a subpoena. The rule dictates how a foreign subpoena is to be obtained:

4:11-4. Testimony for Use in Foreign Jurisdictions.

\* \* \*

(b) Testimony for Use in a Foreign State.

(1) Submission of Foreign Subpoena. Whenever the deposition of a person is to be taken in this State pursuant to the laws of a foreign state for use in connection with proceedings there, an out-of-

state attorney or party may submit a foreign subpoena along with a New Jersey subpoena, in the name of the Clerk of the Superior Court, which complies with subparagraph (3) to an attorney authorized to practice in this State or to the Clerk of the Superior Court or designee. The foreign subpoena must include the following phrase below the case number: ‘For the issuance of a New Jersey Subpoena Under New Jersey Rule 4:11-4(b)’ and shall be filed with the Clerk of the Superior Court.<sup>1</sup>

The rule also indicates that a request for a foreign subpoena does not constitute an appearance in the courts of New Jersey.<sup>2</sup> Pursuant to subparagraph (3), the subpoena must state the name of the New Jersey court issuing it, incorporate the terms and conditions used in the foreign subpoena, advise the person to whom the subpoena is directed of that person’s right to move to quash or modify the subpoena, contain or be accompanied by the contact information of all counsel of record, and bear the caption and case number of the foreign case.<sup>3</sup>

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Similarly, Pennsylvania adopted its version of the UIDDA in 2012, codified at 42 Pa. C.S. §§5331-37. Section 5335 states that to request the issuance of a Pennsylvania subpoena, a party must submit a foreign subpoena to a prothonotary in the jurisdiction in which the person who is the subject of the order resides, is employed, or regularly transacts business in person.<sup>4</sup> The prothonotary, upon receipt of the foreign subpoena, shall issue a subpoena for service upon the person to whom the foreign subpoena is directed.<sup>5</sup> The subpoena must incorporate the terms used in the foreign subpoena and contain the contact information of all counsel of record.<sup>6</sup> Similar to the rule in New Jersey, a request for the issuance of a subpoena does not constitute an appearance in the Pennsylvania courts.<sup>7</sup>

The states that have adopted the UIDDA have some discretion in requiring additional actions than those enumerated in the Act itself. Further, different Counties may have different fees. For example, in Illinois, to obtain a foreign subpoena in Cook County, one must submit a check for \$368.00 made payable to the Clerk, while in Kane County, there is no filing fee. While the process has been streamlined for all but a handful of states, it would still be in an attorney's best interests to call the Clerk/Prothonotary of the foreign

County in which the documents/individuals are located and confirm that specific County's procedures as well as any fee schedule. ♦

<sup>1</sup> N.J. Ct. R. 4:11-4(b)(1)

<sup>2</sup> N.J. Ct. R. 4:11-4(b)(2)

<sup>3</sup> N.J. Ct. R. 4:11-4(b)(3)

<sup>4</sup> 42 Pa. C.S. §5335(a)

<sup>5</sup> 42 Pa. C.S. §5335(b)

<sup>6</sup> 42 Pa. C.S. §5335(c)

<sup>7</sup> 42 Pa. C.S. §5335(a)

***Editor's Note:** Sarah F. Dooley is an attorney at Duffy + Partners, where she focuses her practice on representing the catastrophically injured. She is also a member of the *Verdict* Editorial Board. You may contact Ms. Dooley at: [sdooley@duffyfirm.com](mailto:sdooley@duffyfirm.com).*