

RULE 88.10 | CRIMINAL DISCOVERY

(a) A defendant's request to the Court for entry of the Standing Discovery Order shall constitute a discovery request by the defendant under Fed. R. Crim. P. 16(a)(1)(A), (B), (C), (D), (E), and (F), and, following entry of the Standing Discovery Order, the government shall comply with the obligations imposed upon it by Fed. R. Crim. P. 16(a)(1)(A-F), and shall permit the defendant to inspect and copy the written or recorded statements made by the defendant, or copies thereof, or supply copies thereof, which are within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the government, all subject to the provisions of Fed. R. Crim. P. 16(a)(2).

(b) Following a defendant's request to the Court for entry of the Standing Discovery Order and the Court's entry of the Standing Discovery Order, the defendant, subject to the provisions of Fed. R. Crim. P. 16(b)(2), shall:

(1) after the government complies with Fed. R. Crim. P. 16(a)(1)(E), comply with the obligations that arise under Fed. R. Crim. P. 16(b)(1)(A); and

(2) after the government complies with Fed. R. Crim. P. 16(a)(1)(F), comply with the obligations that arise under Fed. R. Crim. P. 16(b)(1)(B).

(c) The government shall reveal to the defendant and permit inspection and copying of all information and material known to the government which may be favorable to the defendant on the issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), and *United States v. Agurs*, 427 U.S. 97 (1976).

(d) The government shall disclose to the defendant the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses, within the scope of *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959).

(e) The government shall supply the defendant with a record of prior convictions of any alleged informant who will testify for the government at trial.



(f) The government shall state whether defendant was identified in any lineup, showup, photo array or similar identification proceeding, and produce any pictures utilized or resulting therefrom.

(g) The government shall advise its agents and officers involved in this case to preserve all rough notes.

(h) The government shall comply with the notice obligations set forth in Federal Rule of Evidence 404(b).

(i) The government shall state whether the defendant was an aggrieved person, as defined in 18 U.S.C. §2510(11), of any relevant electronic surveillance that was authorized pursuant to 18 U.S.C. §2516 and 18 U.S.C. §2518 and that has been unsealed in accordance with 18 U.S.C. §2518, and if so, shall set forth in detail the circumstances thereof.

(j) The government shall have transcribed the grand jury testimony of all witnesses who will testify for the government at the trial of this cause, preparatory to a timely motion for discovery.

(k) The government shall, upon request, deliver to any chemist selected by the defense, who is presently registered with the Attorney General in compliance with 21 U.S.C. §§822 and 823, and 21 C.F.R. §101.22(8), a sufficient representative sample of any alleged contraband which is the subject of this indictment, to allow independent chemical analysis of such sample.

(l) The government shall permit the defendant, his counsel and any experts selected by the defense to inspect any automobile, vessel, or aircraft allegedly utilized in the commission of any offenses charged. Government counsel shall, if necessary, assist defense counsel in arranging such inspection at a reasonable time and place, by advising the government authority having custody of the thing to be inspected that such inspection has been ordered by the court.

(m) The government shall provide the defense, for independent expert examination, copies of all latent fingerprints or palm prints which have been identified by a government expert as those of the defendant.

(n) The parties shall make every possible effort in good faith to stipulate to all facts or points of law the truth and

existence of which is not contested and the early resolution of which will expedite the trial.

(o) Schedule of Discovery.

(1) Discovery which is to be made in connection with a pre-trial hearing other than a bail or pre-trial detention hearing shall be made not later than forty-eight (48) hours prior to the hearing. Discovery which is to be made in connection with a bail or pre-trial detention hearing shall be made not later than the commencement of the hearing.

(2) Discovery which is to be made in connection with trial shall be made not later than fourteen (14) days after the arraignment, or such other time as ordered by the court.

(3) When discovery concerning expert witnesses has been requested and is required to be made pursuant to Fed. R. Crim. P. 16(a)(1)(G) or Fed. R. Crim. P. 16(b)(1)(C), it shall be made as follows, or at such other time as ordered by the court:

(A) An initial written summary of the anticipated testimony that is subject to disclosure shall be provided to the requesting party within fourteen (14) days of that party's written request pursuant to Fed. R. Crim. P. 16(a)(1)(G)(i) or Fed. R. Crim. P. 16(b)(1)(C)(i), except that the summary need not be provided to the requesting party earlier than fourteen (14) days after the arraignment. That summary must provide a synopsis of:

the anticipated opinions,

the bases and reasons for those opinions, and

either the anticipated expert witness's qualifications, if the particular expert witness has already been selected, or

the type of expert witness who will be providing the anticipated testimony.

(B) The more-detailed information required pursuant to Fed. R. Crim. P. 16(a)(1)(G) or Fed. R. Crim. P. 16(b)(1)(C) must be disclosed:



(i) no later than twenty-one (21) days before the commencement of trial for testimony that the government intends to present at trial during its case-in-chief, except that this disclosure need not be provided earlier than fourteen (14) days after the arraignment;

(ii) no later than seven (7) days before the commencement of trial for testimony that the government intends to present at trial during its rebuttal to counter testimony that the defendant has timely disclosed under Fed. R. Crim. P. 16(b) (1) (C);

(iii) no later than twenty-one (21) days before the commencement of trial for testimony that the defendant intends to present at trial during the defendant's case-in-chief, including testimony on the defendant's mental condition, except that this disclosure need not be provided earlier than fourteen (14) days after the arraignment; and

(iv) no later than seven (7) days before the commencement of trial for testimony that the defendant intends to present at trial to counter testimony that the government has timely disclosed under Fed. R. Crim. P. 16(a) (1) (G).

A defendant or the government may request, pursuant to this rule and Fed. R. Crim. P. 16(d) or Fed. R. Crim. P. 16.1(b), that the court exercise its discretion and alter the default deadlines established by this rule. Any such request shall set forth the reasons (for example, to ensure sufficient time to provide effective assistance of counsel, prepare adequately for trial, find and secure an expert witness, or prepare the required expert disclosure) and the factual circumstances that warrant the requested modification of the expert discovery timetable.

(4) Discovery which is to be made in connection with post-trial hearings (including, by way of example only, sentencing hearings) shall be made not later than seven (7) days prior to the hearing. This discovery rule shall



not affect the provisions of Local Rule 88.8 regarding pre-sentence investigation reports.

(5) It shall be the continuing duty of counsel for both sides to immediately reveal to opposing counsel all newly discovered information or other material within the scope of this Local Rule.

(6) In accordance with Fed. R. Crim. P. 16.1(a), no later than fourteen (14) days after a defendant's arraignment, the attorney for the government and the defendant's attorney must confer and try to agree on:

(A) any anticipated request for modification of the timetables and procedures for pretrial disclosure prescribed by this rule and Fed. R. Crim. P. 16; or

(B) a timetable and procedures for pretrial disclosure under Rule 16 if the Standing Discovery has not been requested and entered.

In accordance with Fed. R. Crim. P. 16.1(b), to facilitate preparation for trial, one or both parties may ask the court to modify the time, place, manner, or other aspects of disclosure prescribed by this rule or Fed. R. Crim. P. 16, or to determine the time, place, manner or other aspects of disclosure that have not already been determined by this rule or Fed. R. Crim. P. 16.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 2000; April 15, 2003; April 15, 2005; April 15, 2007; April 15, 2010; December 2, 2013; December 1, 2015; December 1, 2016; December 2, 2019, December 1, 2020; December 1, 2022.

Authority

(1994) Former Standing Order on Criminal Discovery of the Southern District, as amended after public hearing in 1994.

Comments

(2000) With regard to discovery practices related to search warrants in criminal cases see September 7, 1999, letter from the then United States Attorney for the Southern District of Florida which has been posted at the U.S. Attorney's website at http://www.usdoj.gov/usao/fls/Discovery_Practices.html.

