

RULE CR-16. DISCOVERY AND INSPECTION

(a) Discovery Conference and Agreement.

- (1) The parties need not make standard discovery requests, motions, or responses if, not later than the deadline for filing pretrial motions (or as otherwise authorized by the court), they confer, attempt to agree on procedures for pretrial discovery, and sign and file a copy of the Disclosure Agreement Checklist appended to this rule.
- (2) If the Disclosure Agreement Checklist indicates that a party intends to disclose, but does not currently possess, certain listed information, that party must disclose the information as soon as practicable.
- (3) If the Disclosure Agreement Checklist indicates that a party refuses to disclose information, the other party may file motions regarding the undisclosed information within 10 days after filing of the checklist.
- (4) Filing of the Disclosure Agreement Checklist does not preclude a party from filing motions relating to information not listed in the checklist.

(b) Timing of Discovery.

- (1) ***Discovery deadlines.*** Unless otherwise ordered by the court, or agreed to by the parties in writing:
 - (A) The parties must provide discovery in connection with pretrial release or detention not later than the commencement of a hearing on pretrial release or detention;
 - (B) The parties must provide discovery in connection with a pretrial hearing, other than a pretrial release or detention hearing, not later than 48 hours before the hearing; and
 - (C) The parties must provide discovery in connection with trial, whether agreed to by the parties or otherwise required, not later than:
 - (i) 14 days after arraignment; or

- (ii) if the defendant has waived arraignment, within 14 days after the latest scheduled arraignment date.
 - (2) **Earlier disclosure.** The court encourages prompt disclosure, including disclosure before the deadlines set out in this rule.
 - (3) **Disclosure after motions deadline.** The disclosure of information after the expiration of a motions deadline usually provides good cause for an extension of time to file motions based on that information.
 - (4) **Continuing duty to disclose.** The parties have a continuing duty to disclose promptly to opposing counsel all newly discovered information the party is required to disclose, or has agreed to disclose in the Disclosure Agreement Checklist.
- (c) Late Disclosure.**
- (1) The late disclosure of material information under this rule is not usually a ground for exclusion of evidence, unless:
 - (A) the information was within the party's possession, custody or control, and its existence was known, or by the exercise of due diligence could have been known, to the party's attorney; and
 - (B) the party's attorney has not made good faith efforts to obtain and disclose the information on time.
 - (2) If not excluded under subsection (c)(1), material information that is not timely disclosed usually provides good cause for:
 - (A) extending the time to file a motion or notice, or to request a hearing, based on the late-disclosed information;
 - (B) extending a deadline for reaching a plea-bargain agreement; and
 - (C) continuing the trial setting.

Committee Notes

1. Subsection (a) and the appended checklist provide a formal means by which the parties can, by agreement, regulate their discovery practice. This is not intended to preclude other agreed discovery methods (such as the open-file discovery regularly practiced in some divisions).
2. Subsection (b) sets out discovery deadlines. Like Rule CR-12, subsection (b) explicitly recognizes that other deadlines may be set by court order. It also allows the parties to agree to other deadlines in writing. The subsection includes a deadline for trial discovery of 14 days from arraignment. Because the deadline for pretrial motions under Rule CR-12 is 10 days from arraignment, this discovery deadline does not resolve the potential problem caused by motions being due before discovery is provided. The potential problem is dealt with by subsection (b)(3).
3. Subsection (c) deals with the problem of late-disclosed discovery. The rule recognizes that, when late disclosure of evidence is done in good faith, it should not usually provide grounds for excluding the evidence, but usually does provide cause for a continuance or other extension of time. Subsection (c) is not intended to limit the court's discretion under Federal Rule of Criminal Procedure 16(d).
4. The disclosure agreement checklist appended to the rule does not include specific reference to confidential informants. There are some cases in which an "informant" category on the checklist would not capture the unique circumstances regarding cooperating individuals; in those cases, any reference to informants on the checklist could be prejudicial to the Government, or misleading to the defense. Nevertheless, the identity and location of informants are important, recurring discovery issues. Subsection (a)(4) allows the defense to file discovery motions regarding informants; alternatively, the parties may address the issue in the "other matters" section of the checklist. If the checklist indicates that the Government refuses to disclose information regarding an informant, subsection (a)(3) would provide the defendant additional time to file a motion for disclosure.

PARTIES' DISCLOSURE AGREEMENT CHECKLIST									
	Disclosed		Will Disclose Upon Receipt		Refuse to Disclose		Not Applicable		Comments
	Gov't	Def	Gov't	Def	Gov't	Def	Gov't	Def	
Police/Agent Reports									
Rule 12(d)(2) material									
Intercepted communications (18 U.S.C. § 2510, consensual)									
Rule 16 material: Defendant statement Defendant record Documents Tangible Objects Examination/test reports Experts									
FRE 404(b) material									
Immigration file									
Eyewitness ID (lineup, showup, photo spread)									
Exculpatory material (<i>Brady</i>)									
Impeachment material (<i>Giglio, Napue</i> , FRE 608, 609)									
Witness list									
Witness statements (Rule 26.2, 18 U.S.C. § 3500)									
Guideline calculation material (U.S.S.G. §6B1.2)									
Other matters:									

DEFENDANT'S ATTORNEY

DATE

ASSISTANT U.S. ATTORNEY

DATE