

CRIMINAL APPENDIX

STANDING ORDER ON DISCOVERY

(Amended December 19, 2022)

In all criminal cases, it is Ordered:

(A) Initial Disclosure by the Government.

No later than 14 days after the arraignment, the attorney for the government and the defendant's attorney must confer and try to agree on a timetable and procedures for pretrial disclosure under Rule 16. After the discovery conference, one or both of the parties may ask the court to determine or modify the time, place, manner, or other aspects of disclosure to facilitate preparation for trial.

If any agreement is reached, this agreement shall be reduced to writing and filed with the Court by the government within 3 days of reaching the agreement.

(1) Information subject to disclosure.

Within 14 days after the arraignment or within the period established by the discovery conference or otherwise established by the court, the attorney for the government shall furnish to defense counsel copies, or allow defense counsel to inspect or listen to and record items which are impractical to copy, of the following items within the government's possession, custody, or control, the existence of which is known or by the exercise of due diligence could be known to the attorney for the government:

(a) the substance of any relevant oral statement, or the portion of any written record containing it, made by the defendant, before or after arrest in response to interrogation by a person the defendant knew was a government agent, if the government intends to use the statement at trial;

(b) any relevant written or recorded statement by the defendant;

(c) the defendant's recorded testimony before a grand jury relating to the charged offense;

(d) for an organizational defendant, any statement by a person who is covered by Rule 16(a)(1)(C);

(e) the defendant's prior criminal record;

(f) books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, which are material to preparing the

defense or which the government intends to use in its case-in-chief at trial, or were obtained from or belong to the defendant;

(g) results or reports of any physical or mental examinations and of any scientific tests or experiments, if the item is material to preparing the defense or the government intends to use the item in its case-in-chief;

(h) all warrants, applications, with supporting affidavits, testimony under oath, returns, and inventories for the arrest of the defendant and for the search and/or seizure of the defendant's person, property, things, or items with respect to which the defendant has standing to move to suppress;

(i) all applications, orders, line sheets, and recordings obtained pursuant to Chapter 119 of Title 18 of the United States Code with respect to which the defendant has standing to move to suppress;

(j) all information that may be favorable to the defendant on the issues of guilt or punishment and that falls within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny;

(k) all information concerning the existence and substance of any payments, promises of immunity, leniency, or preferential treatment, made to prospective government witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972), *Napue v. Illinois*, 360 U.S. 264 (1959) and their progeny;

(l) all information concerning the defendant's identification in any lineup, show up, photospread or similar identification proceedings;

(m) all information related to other crimes, wrongs or acts of the defendant that will be offered as evidence by the government at trial pursuant to Federal Rule of Evidence 404(b).

(2) Information Not Subject to Disclosure. Except as otherwise provided by law, this Standing Order does not require the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case. Nor does this Standing Order require the discovery or inspection of statements made by prospective government witnesses, except as provided in 18 U.S.C. § 3500.

(3) Grand Jury Transcripts. This Standing Order does not apply to the discovery or inspection of a grand jury's recorded proceedings, except as to grand jury testimony by the defendant.

(B) Disclosure by the Defendant.

(1) Information Subject to Disclosure. Within 14 days after the attorney for the government provides the discovery required by Paragraph A, defense counsel shall:

(a) inform the attorney for the government in writing whether the nature of the defense is (i) alibi, (ii) insanity, mental disease or defect or any other mental condition of the

defendant bearing on either (A) the issue of guilt or (B) the issue of punishment in a capital case, or (iii) acting under public authority at the time of the offense;

(b) furnish copies or allow the government to inspect or listen to and record items that are impractical to copy, of the following items that are within the defendant's possession, custody or control:

(i) books, papers, documents, data, photographs, tangible objects, buildings or places, or copies of portions of any of those items if the defendant intends to use the item in his case-in-chief at trial;

(ii) results or reports of any physical or mental examinations and of any scientific tests or experiments, if the defendant intends to use the item in the defendant's case-in-chief at trial, or intends to call the witness who prepared the report and the report relates to the witness's testimony.

(2) Information Not Subject to Disclosure. Except for scientific or medical reports, this Standing Order does not require discovery or inspection of:

(a) reports, memoranda, or other documents made by the defendant, or the defendant's attorney or agent, during the case's investigation or defense; or

(b) a statement made to the defendant, or the defendant's attorney or agent, by:

(i) the defendant;

(ii) a government or defense witness; or

(iii) a prospective government or defense witness.

(C) Disclosure of Expert Witnesses.

(1) Government's Disclosure

(a) Information Subject to Disclosure.

(i) **Duty to Disclose.** At the defendant's request, the government must disclose to the defendant, in writing, the information required by subparagraph (iii) for any testimony that the government intends to use at trial under Federal Rules of Evidence 702, 703, or 705 during its case-in-chief, or during its rebuttal to counter testimony that the defendant has timely disclosed under subparagraph (2)(a)(i). If the government requests discovery under the second bullet point in subparagraph (2)(a)(i) and the defendant complies, the government must, at the defendant's request, disclose to the defendant, in writing, the information required by subparagraph (iii) for testimony that the government intends to use at trial under Federal Rules of Evidence 702, 703, or 705 on the issue of the defendant's mental condition.

(ii) **Time to Disclose.** Unless otherwise ordered, the Government's disclosure under this section shall be no later than 60 days before the final pretrial conference

so as to allow sufficient time before trial to provide a fair opportunity for the defendant to meet the government's evidence.

(iii) Contents of the Disclosure. The disclosure for each expert witness must contain:

- a complete statement of all opinions that the government will elicit from the witness in its case-in-chief, or during its rebuttal to counter testimony that the defendant has timely disclosed under subparagraph (2)(a)(i);
- the bases and reasons for them;
- the witness's qualifications, including a list of all publications authored in the previous 10 years; and
- a list of all other cases in which, during the previous 4 years, the witness has testified as an expert at trial or by deposition.

(iv) Information Previously Disclosed. If the government previously provided a report under subparagraph (A)(1)(g) that contained information required by subparagraph (iii), that information may be referred to, rather than repeated, in the expert-witness disclosure.

(v) Signing the Disclosure. The witness must approve and sign the disclosure, unless the government:

- states in the disclosure why it could not obtain the witness's signature through reasonable efforts; or
- has previously provided under subparagraph (A)(1)(g) a report, signed by the witness, that contains all the opinions and the bases and reasons for them required by (iii).

(vi) Supplementing and Correcting a Disclosure. The government must supplement or correct its disclosures in accordance with section (D).

(2) Defendant's Disclosure.

(a) Information Subject to Disclosure.

(i) Duty to Disclose. At the government's request, the defendant must disclose to the government, in writing, the information required by subparagraph (iii) for any testimony that the defendant intends to use under Federal Rule of Evidence 702, 703, or 705 during the defendant's case-in-chief at trial, if:

- the defendant requests disclosure under subparagraph (1)(a)(i) and the government complies; or
- the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition.

(ii) Time to Disclose. Unless otherwise ordered, the defendant's disclosure under this section shall be no later than 30 days before the final pretrial conference so as to allow sufficient time before trial to provide a fair opportunity for the government to meet the defendant's evidence.

(iii) Contents of the Disclosure. The disclosure for each expert witness must contain:

- a complete statement of all opinions that the defendant will elicit from the witness in the defendant's case-in-chief;
- the bases and reasons for them;
- the witness's qualifications, including a list of all publications authored in the previous 10 years; and
- a list of all other cases in which, during the previous 4 years, the witness has testified as an expert at trial or by deposition.

(iv) Information Previously Disclosed. If the defendant previously provided a report under section (B) that contained information required by subparagraph (iii), that information may be referred to, rather than repeated, in the expert-witness disclosure.

(v) Signing the Disclosure. The witness must approve and sign the disclosure, unless the defendant:

- states in the disclosure why the defendant could not obtain the witness's signature through reasonable efforts; or
- has previously provided under subparagraph (B)(1)(b)(ii) a report, signed by the witness, that contains all the opinions and the bases and reasons for them required by subparagraph (iii).

(vi) Supplementing and Correcting a Disclosure. The defendant must supplement or correct the defendant's disclosures in accordance with section (D).

(D) Continuing Duty to Disclose. It shall be the continuing duty of counsel for both sides to reveal immediately to opposing counsel all newly-discovered material within the scope of this Standing Order.

(E) Discovery Motions. Any motions related to discovery shall contain a certification that counsel have conferred and that, after good faith efforts to resolve their differences on discovery, they were unable to reach an accord.

(F) Compliance. The Court may, upon a showing of good cause, order the discovery provided under this Standing Order be denied, restricted or deferred, or make such other order as appropriate.

(G) Use of Discovery Material. Unless otherwise authorized by the Court or the party producing discovery, and except for materials that were obtained from or belong to the party

receiving discovery, a party shall not use any material that it receives as discovery from the opposing party, except for the purposes of the criminal proceeding itself. For purposes of this rule, the criminal proceeding includes proceedings in the district court, on appeal, or in a collateral attack of any judgment arising from that criminal proceeding.

(H) Protected Discovery Material.

(1) Designation of Protected Discovery Material. The attorney for the government may designate in writing that certain discovery material is “Protected Discovery Material” by bates-stamp, letter, index or other clear manner. Protected Discovery Material means only grand jury testimony and written or recorded statements of witnesses (other than by the defendant as set forth in subparagraph (A)(1)(a)-(d) above), material filed under seal in any court, reports drafted by law enforcement officers or agencies, material provided to the United States by foreign law enforcement officers or agencies and/or material regarding such provision, and material that has been classified. At any time, the Court may, for good cause, issue an order regarding the designation, use, or scope of Protected Discovery Material.

(2) Custody of Protected Discovery Material. Unless otherwise authorized by the Court or the party producing discovery, and except for materials that were obtained from or belong to the party receiving discovery, counsel shall not provide copies of any Protected Discovery Material to any persons, except that defense counsel may provide copies to persons employed by defense counsel in connection with the investigation or defense of the case, and the government may provide copies to law enforcement agents or persons employed by government counsel in connection with the investigation and prosecution of the case. In addition, any person receiving material under this provision from defense counsel, or the government shall not provide copies of this Protected Discovery Material to any person.

(3) Public Disclosure of Protected Discovery Material. When a party believes it is necessary to file any Protected Discovery Material, absent consent of the opposing party, that party must comply with Local Criminal Rule 57(b) by moving to file the material under seal.