

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

**ORDER ON ROUTINE DISCOVERY  
IN CRIMINAL CASES**

**ADM-1  
ORDER 22-20**

**ORDER**

Effective December 1, 2022, and pending further order of the court, the below provisions will supersede the provisions of LCrR 16.1.

**16.1 Routine Discovery**

The parties shall disclose the following information without waiting for a demand from the opposing party.

**(a) Criminal Record Report.** Prior to or during the course of the initial appearance, the United States Probation and Pretrial Service Office shall, to the extent in their possession, provide the government with two (2) copies of the defendant's criminal record report. Upon receipt, the government shall provide a copy of that report to counsel for the defendant, it being presumed that defense counsel has made a request for this information pursuant to Fed. R. Crim. P. 16(a)(1)(D).

**(b) Material Discoverable Pursuant to Fed. R. Crim. P. 16.**

**(1) By the Government.** The government shall disclose information described in Fed. R. Crim. P. 16(a)(1) within fourteen (14) days after the arraignment unless the parties agree on a different date or unless the defendant notifies the government within that time period and prior to receipt of such information that the defendant declines to receive that information.

**(2) By the Defendant.** The defendant shall disclose the information described in Fed. R. Crim. P. 16(b) within thirty (30) days after the arraignment unless the parties agree on a different date or unless the defendant has timely notified the government pursuant to LCrR 16.1(b)(1) that the defendant declines reciprocal discovery.

**(3) Expert Witnesses and Reports/Summaries.** The initial disclosure requirements of subsection (b)(1) and (2) only require the disclosure of known expert witnesses and Fed. R. Crim. P. 16(a)(1)(G)(iii) and Fed. R. Crim. P. 16(b)(1)(C)(iii) materials possessed by the government or the defendant, or that can be obtained without undue burden, as of the disclosure deadline. Later identified expert witnesses, and all later obtained or created information specified in Fed. R. Crim. P. 16(a)(1)(G)(iii) and (b)(1)(C)(iii), shall be disclosed no later than thirty (30) days prior to trial. Rebuttal

expert witnesses and Fed. R. Crim. P. 16(a)(1)(G)(iii) materials relating to those witnesses, shall be disclosed no later than fifteen (15) days prior to trial.

**(c) Electronic Communications.** The government shall disclose any evidence suggesting that the government has intercepted the defendant's wire or electronic communications, as defined in 18 U.S.C. § 2510, within fourteen (14) days after the arraignment.

**(d) Exculpatory and Impeachment Material.** The government shall disclose any evidence material to issues of guilt or punishment within the meaning of Brady v. Maryland, 373 U.S. 83 (1963), and related cases, and any impeachment material as defined in Giglio v. United States, 405 U.S. 150 (1972), and related cases, at least twenty-one (21) days before trial. For good cause shown, the government may seek approval to disclose said material at a later time.

**(e) Witness Statements.** The government shall disclose any witness statements, as defined in Fed. R. Crim. P. 26.2(f) and 18 U.S.C. § 3500, at least seven (7) days prior to the commencement of the proceeding at which the witness is expected to testify unless the government determines that circumstances call for later disclosure as allowed by Rule 26.2 and 18 U.S.C. § 3500.

**(f) Fed. R. Evid. 404(b) Material.** The government shall disclose the general nature of any evidence that it intends to introduce pursuant to Fed. R. Evid. 404(b) at least seven (7) days prior to trial.

**(g) Exhibits.** At least seven (7) days prior to trial, the parties shall exchange and file exhibit lists. Exhibits intended to be used solely for impeachment need not be listed. Objections to exhibit lists shall be filed on the day of trial. The parties shall deliver their exhibits to the clerk's office and a copy to each other at least one day before the start of evidence.

**(h) Presentation of Electronic Evidence to a Deliberating Jury.** At least seven (7) days prior to trial, the parties shall file a statement confirming that they have met and conferred on whether they intend to have the jury use the Jury Evidence Recording System (JERS) and stating their respective positions on the use of JERS at trial. To the extent one but not all parties want to use JERS, the party who wants to use JERS shall file a motion requesting leave to do so.

**(i) Witness Lists.** The parties shall exchange and file witness lists at least seven (7) days prior to trial. For good cause shown, either party may seek court approval to exchange witness lists at a later date.

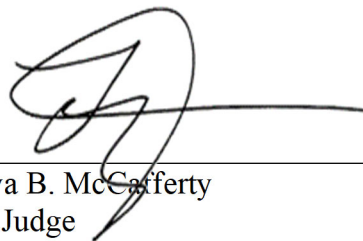
**(j) Government Definition.** For the purpose of this rule, the term "government" includes federal, state, and local law enforcement officers and other government officials, and any laboratories, agencies, organizations, or consultants who have participated in the investigation

and/or prosecution of the offense(s) with which the defendant is charged. The prosecution has an obligation to seek from these sources all information subject to disclosure under this rule.

(§§ (a)(2) and (d) amended 1/1/97; § (f) amended 1/1/06; § (a) added, former §§ (a) through (g) relettered accordingly, new § (d) amended 12/1/09; § (b)(3) added and § (g) amended 12/1/11; amended § (g), added § (h), relettered former § (h) 12/1/13; § (b)(3) amended and § (j) added 12/1/22).

SO ORDERED.

Date: November 29, 2022



---

Landya B. McCafferty  
Chief Judge