

Criminal L. R. 12. Pretrial Conferences; Motions; Evidentiary Hearings; Open File Expanded Discovery Policy.

(a) Pretrial Conferences.

(1) In any case that ~~appears~~^{is} unusually complex, by reason of the number of parties, the novelty of legal or factual issues presented, the volume of discovery materials, or other factors peculiar to that case, the government must notify the Clerk of Court when the indictment or information is filed that the case ~~may be~~^{is} appropriate for a pretrial scheduling conference pursuant to Fed. R. Crim. P. 17.1. If the government has not suggested a pretrial scheduling conference, ~~the a~~ defendant^{se} may do so upon learning that the case may be unusually complex~~at the initial appearance or arraignment~~.

(2) A pretrial scheduling conference pursuant to Criminal L. R. 12(a)(1) and Fed. R. Crim. P. 17.1 may be set by the judge conducting the arraignment, by the judge assigned to pretrial proceedings, or by the judge assigned to preside over the trial of the case. At a pretrial scheduling conference, the Court may inquire as to the parties' discussions pursuant to Criminal L. R. 16.1 and may set deadlines for filing pretrial motions, briefing, discovery and disclosure by all parties, hearings, trial, or any other dates that will further the ends of justice.

(3) In cases ~~infer~~ which there will be no pretrial scheduling conference under Criminal L. R. 12(a)(1), if the government is following its Expanded Discovery ~~Pthe open file~~ policy, the government must make available to the defense all information known to the government or in the government's possession falling within the scope of Criminal L. R. 16(a)(2). If the government is not following its Expanded Discovery ~~Pthe open file~~ policy, the government must make available to the defense all information within the scope of Fed. R. Crim. P. 16(a)(1) (other than material falling within Fed. R. Crim. P. 16(a)(1)(G)). In all cases for which there will be no pretrial scheduling conference, the government must undertake its best efforts to make as much discovery available as possible at arraignment or within 5 days after ~~the defendant's~~ arraignment ~~and plea on an indictment, unless the government shows good cause for later disclosure~~. The government has a continuing duty to disclose discoverable material as it becomes available. If the defense accepts disclosure from the government under this rule, the defense is bound to the provisions of Fed. R. Crim. P. 16(b).

(b) Motions.

(1) Absent a court order, all motions raising any issue described in Fed. R. Crim. P. 12(b)(3) must be filed within 20 days after arraignment on an indictment. Every motion must state the statute or rule pursuant to which it is made and must be accompanied by a supporting memorandum and, when necessary, affidavits or other documents; or a certificate of counsel stating that no

brief or other supporting documents will be filed.

(2) Non-Movant's Response. Absent a court order, the non-movant may have 10 days from the date the motion is due to file a memorandum or other materials in response to any such motion. If the non-movant does not intend to file a response, the non-movant must file a statement that so indicates.

(3) Movant's Reply. Absent a court order, the movant may have 5 days from the date the response is due to file any reply.

(4) If any motion seeks an evidentiary hearing, Criminal L. R. 12(c) applies and the movant is not required to file a supporting memorandum of law with the motion. If the movant does not seek an evidentiary hearing, any supporting memorandum of law must be filed by the movant with the motion.

(c) Evidentiary Hearing. If a motion seeks an evidentiary hearing, the movant must provide in the motion a short, plain statement of the principal legal issue or issues at stake and specific grounds for relief in the motion and, after a conference with the non-movant, provide a description of the material disputed facts that the movant claims require an evidentiary hearing. The movant also must provide an estimate of the in-court time necessary for the hearing. The non-movant may file a response opposing an evidentiary hearing within 3 days after filing of a movant's motion seeking an evidentiary hearing. The non-movant's response must include a short, plain statement of why that party believes that an evidentiary hearing is unnecessary.

Criminal L. R. 12.4. Disclosure Statement.

(a) Required information. To enable the Court to determine whether recusal is necessary or appropriate, an attorney for a nongovernmental corporate party or an amicus curiae must file a Disclosure Statement that:

(1) states the full name of every party or amicus the attorney represents in the action; ~~and~~

(2) ~~if such party or amicus is a corporation:~~
~~(A)~~ identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; ~~and~~

(3) ~~or~~

~~(B) states there is no such corporation; and~~

states the names of all law firms whose attorneys will appear, or are expected to appear, for the party in this Court.

(b) Filing and Serving. A nongovernmental corporate party must:

(1) file the Disclosure Statement with its first appearance; and

(2) promptly file a supplemental statement if any required information changes.

~~(c) Form.~~ The disclosure statement must be substantially in the following form:

~~{CAPTION}~~

~~The undersigned, counsel of record for [John Doe, defendant],
furnishes the following list in compliance with Criminal L. R. 12.4 and Fed.
R. Crim. P. 12.4:~~

~~{Listed by Category}~~

Date: _____

Attorney's Signature

Criminal L. R. 16. Discovery and Inspection.

(a) ~~Open File~~Expanded Discovery Policy.

(1) At arraignment, the government must state on the record to the presiding judge whether it is following ~~the open file~~its Expanded Discovery P~~policy~~ as defined in Criminal L. R. 16(a)(2). If the government states that it is following the Expanded Discovery P~~open file~~~~policy~~ and the defense accepts such discovery materials, then the defense's discovery obligations under Fed. R. Crim. P. 16(b) arise without further government motion or request, and both parties must be treated for all purposes in the trial court and on appeal as if each had filed timely written motions requesting all materials required to be produced under Fed. R. Crim. P. 16(a)(1)(A), (B), (C), (D), (E), (F), and (G), and 16(b)(1)(A), (B), and (C), and invoking Fed. R. Crim. P. 16(c). If the government is following the Expanded Discovery P~~open file~~~~policy~~, the government need not respond to and the Court must not hear any motion for discovery under Fed. R. Crim. P. 16(a) or 16(b) unless the motion complies with subsection (b) of this rule.

(2) As defined by the United States Attorney's Office, the "Expanded Discovery Policy" means disclosure without defense motion of all information and materials listed in Fed. R. Crim. P. 16(a)(1)(A), (B), (C), (D), and (F); upon defense request, material listed in Fed. R. Crim. P. 16(a)(1)(E); material disclosable under 18 U.S.C. § 3500, other than grand jury transcripts; reports of interviews with witnesses the government intends to call in its case-in-chief relating to the subject matter of the testimony of the witness; relevant substantive investigative reports; and all exculpatory material. The government retains the authority to redact information that is not exculpatory and that the government reasonably believes is not relevant to the prosecution, constitutes personal identifying information, would jeopardize the safety of a person other than the defendant, or would jeopardize an ongoing criminal investigation. The defense retains the right to challenge such redactions by motion to the Court.

(3) Unless these items contain exculpatory material, "expanded discovery materials" ordinarily do not include material under Fed. R. Crim. P. 16(a)(1)(G), government attorney work product and opinions, materials subject to a claim of privilege, material identifying confidential informants, any Special Agent's Report (SAR) or similar investigative summary, reports of interviews with witnesses who will not be called in the government's case-in-chief, rebuttal evidence, documents and tangible objects that will not be introduced in the government's case-in-chief, rough notes used to construct formal written reports, and transcripts of the grand jury testimony of witnesses who will be called in the government's case-in-chief.

(4) Unless otherwise ordered by the Court, when the government is following the Expanded Discovery~~open file P~~policy under Criminal L. R. 16(a)(1)

and 16(a)(2), materials described in Fed. R. Crim. P. 16(a)(1)(G) must be disclosed to the defense not later than 15 days before the commencement of the trial, unless the government shows good cause for later disclosure. Grand jury transcripts of any and all witnesses the government intends to call at trial will be made available to the defense no later than 1 business day before the commencement of the trial. The defense must disclose materials described in Fed. R. Crim. P. 16(b)(1)(C) as soon as reasonably practicable after the government's disclosure under Fed. R. Crim. P. 16(a)(1)(G), and in any event not later than 5 business days before trial, unless the defense shows good cause for later disclosure.

(5) If the government is following the ~~open-file~~ Expanded Discovery Policy, the defense must disclose materials described in Fed. R. Crim. P. 16(b)(1)(A) and (B) as soon as reasonably practicable, and in any event not later than 15 days before commencement of the trial, unless the defense shows good cause for later disclosure.

(6) If the government elects not to follow the Expanded Discovery Policy ~~open file~~, discovery must proceed pursuant to Fed. R. Crim. P. 16 and Criminal L. R. 12(a)(3).

(b) Motions to Compel Discovery or Inspection. All motions to compel discovery or disclosure must be accompanied by a written statement by the movant that, after the movant has in good faith conferred or attempted to confer with the party failing to make disclosure or discovery in an effort to obtain it without court action, the parties are unable to reach an accord. The statement must recite the date and time of the conference or conferences and the names of all parties participating in the conference or conference.

Committee Comment: The "Expanded Discovery Policy" set forth in this rule had been known as the "Open File Policy." In 2010, after defense counsel in other districts alleged that the term "open file" was misleading because the government was not providing access to its actual "file," the Department of Justice directed all federal prosecutors to avoid using the term. The change to "Expanded Discovery Policy" simply reflects the fact that the United States Attorney's Office no longer refers to its policy as an "open file." Despite the change in name, the policy embodied in this rule remains unchanged.