

1 **Rule 16. Discovery.**

2 (a) **Disclosures by prosecutor.**

3 (a)(1) Mandatory disclosures. The prosecutor must disclose to the defense the following material
4 or information related to the case of which the prosecution team has knowledge and control:

5 (a)(1)(A) written or recorded statements of the defendant and any codefendants, and the substance
6 of any unrecorded oral statements made by the defendant and any codefendants to law
7 enforcement officials;

8 (a)(1)(B) the criminal record of the defendant and any co-defendants;

9 (a)(1)(C) reports and results of any physical or mental examination, of any identification
10 procedure, and of any scientific test or experiment;

11 (a)(1)(D) physical and electronic evidence, including any warrants, warrant affidavits, books,
12 papers, documents, photographs, and digital media recordings;

13 (a)(1)(E) written or recorded statements of witnesses;

14 (a)(1)(F) reports and notes prepared by law enforcement officials;

15 (a)(1)(G) evidence that must be disclosed under the United States and Utah constitutions,
16 including all evidence favorable to the defendant that is material to guilt or punishment; and

17 (a)(1)(H) any other item of evidence which the court determines on good cause shown should be
18 made available to the defendant in order for the defendant to adequately prepare a defense.

19 (a)(2) Timing of mandatory disclosures. The prosecutor's duty to disclose under paragraph (a)(1)
20 is a continuing duty as the material or information becomes known to the prosecutor. The
21 prosecutor's disclosures must be made as soon as practicable following the filing of an
22 Information. In every case, all material or information listed under paragraph (a)(1) that is
23 presently and reasonably available to the prosecutor must be disclosed before the preliminary
24 hearing, if applicable, or before the defendant is required to plead or go to trial.

25 (a)(3) Disclosures upon request. Upon request, the prosecutor must obtain and disclose to the
26 defense any of the material or information listed above which is possessed by another
27 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,
28 Government Records Access and Management Act.

29 (a)(4) Trial disclosures. The prosecutor must also disclose to the defense the following
30 information and material no later than 14 days, or as soon practicable, before trial:

31 (a)(4)(A) Unless otherwise prohibited by statute or rule, a written list of the names, current

32 contact information, and criminal records, if any, of all persons whom the prosecution intends to
33 call as witnesses at trial; and

34 (a)(4)(B) Any exhibits that the prosecution intends to introduce at trial.

35 (a)(5) Information not subject to disclosure. Unless otherwise ordered by the court on a showing
36 of constitutional, statutory, or regulatory right, the prosecution's disclosure obligations do not
37 include information or material that is privileged or attorney work product. Attorney work
38 product protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules of Civil
39 Procedure.

40 **(b) Disclosures by defense.**

41 (b)(1) Mandatory disclosures. The defense must disclose to the prosecutor any item of evidence
42 which the court determines on good cause shown should be made available to the prosecutor in
43 order for the prosecutor to adequately prepare the prosecutor's case for trial.

44 (b)(2) Other disclosures required by statute. The defense must disclose to the prosecutor such
45 information as required by statute relating to alibi or insanity.

46 (b)(3) Trial disclosures. The defense must also disclose to the prosecutor the following
47 information and material no later than 14 days, or as soon as practicable, before trial:

48 (b)(3)(A) A written list of the names and current contact information of all persons, except for the
49 defendant, whom the defense intends to call as witnesses at trial; and

50 (b)(3)(B) Any exhibits that the defense intends to introduce at trial.

51 (b)(4) Information not subject to disclosure. The defendant's disclosure obligations do not include
52 information or material that is privileged or attorney work product. Attorney work product
53 protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules of Civil Procedure.

54 **(c) Methods of disclosure.** When convenience reasonably requires, the prosecutor or defense
55 may make disclosure by notifying the opposing party that material and information may be
56 inspected, tested or copied at specified reasonable times and places.

57 **(d) Disclosure limitations and restrictions.**

58 (d)(1) The prosecutor or defense may impose reasonable limitations on the further dissemination
59 of sensitive information otherwise subject to discovery to prevent improper use of the information
60 or to protect victims and witnesses from harassment, abuse, or undue invasion of privacy,
61 including limitations on the further dissemination of recorded interviews, photographs, or
62 psychological or medical reports.

63 (d)(2) Upon a sufficient showing the court may at any time order that discovery or inspection be
64 denied, restricted, or deferred, that limitations on the further dissemination of discovery be
65 modified or make such other order as is appropriate. Upon motion by a party, the court may
66 permit the party to make such showing, in whole or in part, in the form of a written statement to
67 be inspected by the judge alone. If the court enters an order granting relief following such an ex
68 parte showing, the entire text of the party's statement shall be sealed and preserved in the records
69 of the court to be made available to the appellate court in the event of an appeal.

70 **(e) Relief and sanctions for failing to disclose.**

71 (e)(1) When a party fails to comply with the disclosure requirements of this rule, a court may,
72 subject to constitutional limitations and the rules of evidence, take the measures or impose the
73 sanctions provided in this paragraph that it deems appropriate under the circumstances. If a party
74 has failed to comply with this rule, the court may take one or more of the following actions:

75 (e)(1)(A) order such party to permit the discovery or inspection of the undisclosed material or
76 information;

77 (e)(1)(B) grant a continuance of the proceedings;

78 (e)(1)(C) prohibit the party from introducing evidence not disclosed; or

79 (e)(1)(D) order such other relief as the court considers just under the circumstances.

80 (e)(2) If after a hearing the court finds that a party has knowingly and willfully failed to comply
81 with an order of the court compelling disclosure under this rule, the nondisclosing party or
82 attorney may be held in contempt of court and subject to the penalties thereof.

83 **(f) Identification evidence.**

84 (f)(1) Subject to constitutional limitations and upon good cause shown, the trial court may order
85 the defendant to appear in a lineup; speak for identification; submit to fingerprinting or the
86 making of other bodily impressions; pose for photographs not involving reenactment of the crime;
87 try on articles of clothing or other items of disguise; permit the taking of samples of blood, hair,
88 fingernail scrapings, and other bodily materials which can be obtained without unreasonable
89 intrusion; provide specimens of handwriting; submit to reasonable physical or medical inspection
90 of the accused's body; and cut hair or allow hair to grow to approximate appearance at the time of
91 the alleged offense.

92 (f)(2) Whenever the personal appearance of the defendant is required for the foregoing purposes,
93 reasonable notice of the time and place of such appearance must be given to the defendant and the

94 defendant's counsel.

95 (f)(3) Unless relieved by court order, failure of the defendant to comply with the requirements of
96 this paragraph without reasonable excuse shall be grounds for revocation of pretrial release and
97 will subject the defendant to such further consequences or sanctions as the court may deem
98 appropriate, including allowing the prosecutor to offer as evidence at trial the defendant's failure
99 to comply with this paragraph.