

1 **Rule 16. Discovery.**

2 (a) **Disclosures by prosecutor.** ~~Except as otherwise provided,~~

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

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

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

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

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

14 (a)(1)(E) reports prepared by law enforcement officials and any notes that are not
15 incorporated into such a report; and

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

18 ~~(a)(2) the criminal record of the defendant;~~

19 ~~(a)(3) physical evidence seized from the defendant or codefendant;~~

20 ~~(a)(4) evidence known to the prosecutor that tends to negate the guilt of the accused,~~
21 ~~mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced~~
22 ~~punishment; and~~

23 ~~(a)(5) any other item of evidence which the court determines on good cause shown should~~
24 ~~be made available to the defendant in order for the defendant to adequately prepare a~~
25 ~~defense.~~

26 ~~(b)(a)(2) Timing of prosecutor's mandatory disclosures. The prosecutor's duty to disclose~~
27 ~~under paragraph (a)(1) is a continuing duty as the material or information becomes known~~
28 ~~to the prosecutor. The prosecutor's disclosures must be made shall make all disclosures as~~
29 ~~soon as practicable following the filing of charges an Information. In every case, all~~
30 ~~material or information listed under paragraph (a)(1) that is presently and reasonably~~
31 ~~available to the prosecutor must be disclosed before the preliminary hearing, if applicable,~~
32 ~~or before the defendant enters a plea of guilty or no contest or goes to trial, unless~~

33 ~~otherwise waived by the defendant, and before the defendant is required to plead. The~~
34 ~~prosecutor has a continuing duty to make disclosure.~~

35 (a)(3) Disclosures upon request.

36 (a)(3)(A) Upon request, the prosecutor must obtain and disclose to the defendant any of the
37 material or information listed in paragraph (a)(1) which is in a record possessed by another
38 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,
39 Government Records Access and Management Act. The request must identify with
40 particularity the record sought and the agency that possesses it, and must demonstrate that
41 the information in the record is directly related to the case.

42 (a)(3)(B) If the government agency refuses to share with the prosecutor the record
43 containing the requested material or information under paragraph (a)(3)(A), or if the
44 prosecution determines that it is prohibited by law from disclosing to the defense the
45 record shared by the governmental agency, the prosecutor must promptly file notice stating
46 the reasons for noncompliance. The defense may thereafter file an appropriate motion
47 seeking a subpoena or other order requiring the disclosure of the requested record.

48 (a)(4) Good cause disclosures. The prosecutor must disclose any other item of evidence
49 which the court determines on good cause shown should be made available to the
50 defendant in order for the defendant to adequately prepare a defense.

51 (a)(5) Trial disclosures. The prosecutor must also disclose to the defendant the following
52 information and material no later than 14 days, or as soon as practicable, before trial:

53 (a)(5)(A) Unless otherwise prohibited by law, a written list of the names and current
54 contact information of all persons whom the prosecution intends to call as witnesses at
55 trial; and

56 (a)(5)(B) Any exhibits that the prosecution intends to introduce at trial.

57 (a)(5)(C) Upon order of the court, the criminal records, if any, of all persons whom the
58 prosecution intends to call as a witness at trial.

59 (a)(6) Information not subject to disclosure. Unless otherwise required by law, the
60 prosecution's disclosure obligations do not include information or material that is
61 privileged or attorney work product. Attorney work product protection is not subject to the
62 exception in Rule 26(b)(5) of the Utah Rules of Civil Procedure.

63 ~~(e) (b) Disclosures by defense. Except as otherwise provided or as privileged,~~

64 (b)(1) Good cause disclosures. ~~¶~~The defense ~~shall~~ must disclose to the prosecutor any item

65 of evidence which the court determines on good cause shown should be made available to

66 the prosecutor in order for the prosecutor to adequately prepare the prosecutor's case for
67 trial.

68 (b)(2) Other disclosures required by statute. The defense must disclose to the prosecutor
69 such information as required by statute relating to alibi or insanity ~~and any other item of~~
70 ~~evidence which the court determines on good cause shown should be made available to the~~
71 ~~prosecutor in order for the prosecutor to adequately prepare the case.~~

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

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

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

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

81 ~~**(d) Timing of defense disclosures.** Unless otherwise provided, the defense attorney shall~~
82 ~~make all disclosures at least 14 days before trial or as soon as practicable. The defense has~~
83 ~~a continuing duty to make disclosure.~~

84 ~~**(e) (c) Methods of disclosure.** When convenience reasonably requires,~~

85 (c)(1) ¶The prosecutor or ~~defense~~ defendant may make disclosure by notifying the
86 opposing party that material and information may be inspected, tested or copied at
87 specified reasonable times and places.

88 (c)(2) If the prosecutor concludes any disclosure required under this rule is prohibited by
89 law, or believes disclosure would endanger any person or interfere with an ongoing
90 investigation, the prosecutor must file notice identifying the nature of the material or
91 information withheld and the basis for non-disclosure. If disclosure is then requested by
92 the defendant, the court must hold an in camera review decide whether disclosure is
93 required and whether any limitations or restrictions will apply to disclosure as provided in
94 paragraph (d).

95 (d) Disclosure limitations and restrictions.

96 (d)(1) The prosecutor or ~~defense~~ defendant may impose reasonable limitations on the
97 further dissemination of sensitive information otherwise subject to discovery to prevent
98 improper use of the information or to protect victims and witnesses from harassment,

99 abuse, or undue invasion of privacy, including limitations on the further dissemination of
100 ~~videotaped recorded~~ interviews, photographs, or psychological or medical reports.

101 ~~(f)(d)(2) Restrictions on disclosure.~~ Upon a sufficient showing the court may at any time
102 order that discovery or inspection be denied, restricted, or deferred, that limitations on the
103 further dissemination of discovery be modified or make such other order as is appropriate.
104 Upon motion by a party, the court may permit the party to make such showing, in whole or
105 in part, in the form of a written statement to be inspected by the judge alone. If the court
106 enters an order granting relief following such an ex parte showing, the entire text of the
107 party's statement shall be sealed and preserved in the records of the court to be
108 made available to the appellate court in the event of an appeal.

109 ~~(g)(e) Relief and sanctions for F~~ailing to disclose.

110 ~~(e)(1) When a party fails to comply with the disclosure requirements of this rule, If at any~~
111 ~~time during the course of the proceedings it is brought to the attention of the court that a~~
112 ~~party has failed to comply with this rule, the court may, subject to constitutional limitations~~
113 ~~and the rules of evidence, take the measures or impose the sanctions provided in this~~
114 ~~paragraph that it deems appropriate under the circumstances. If a party has failed to~~
115 ~~comply with this rule, the court may take one or more of the following actions:~~

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

118 ~~(e)(1)(B)~~ grant a continuance of the proceedings; ~~or~~

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

120 ~~(e)(1)(D) it may enter such other~~ order such other relief as ~~it the court~~ deems just under the
121 circumstances.

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

125 (f) Identification evidence.

126 ~~(f)(1) (h) Additional requirements that may be imposed on the accused.~~ Subject to
127 constitutional limitations and upon good cause shown, the trial court may order the
128 defendant to the accused may be required to:

129 ~~(h)(1)~~ appear in a lineup;

130 ~~(h)(2)~~ speak for identification;

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- 131 ~~(h)(3)~~ submit to fingerprinting or the making of other bodily impressions;
- 132 ~~(h)(4)~~ pose for photographs not involving reenactment of the crime;
- 133 ~~(h)(5)~~ try on articles of clothing or other items of disguise;
- 134 ~~(h)(6)~~ permit the taking of samples of blood, hair, fingernail scrapings, and other bodily
135 materials which can be obtained without unreasonable intrusion;
- 136 ~~(h)(7)~~ provide specimens of handwriting;
- 137 ~~(h)(8)~~ submit to reasonable physical or medical inspection of the accused's body; and
- 138 ~~(h)(9)~~ cut hair or allow hair to grow to approximate appearance at the time of the alleged
139 offense.
- 140 (f)(2) Whenever the personal appearance of the accused is required for the foregoing
141 purposes, reasonable notice of the time and place of such appearance shall be given to the
142 accused and the accused's counsel.
- 143 (f)(3) Unless relieved by court order, Failure of the accused to appear or to comply with
144 the requirements of this paragraph rule, unless relieved by order of the court, without
145 reasonable excuse shall be grounds for revocation of pre-trial release and will subject the
146 defendant to such further consequences or sanctions as the court may deem appropriate,
147 including allowing the prosecutor to offer as evidence at trial the defendant's failure to
148 comply with this paragraph, may be offered as evidence in the prosecutor's case in chief
149 for consideration along with other evidence concerning the guilt of the accused and shall
150 be subject to such further sanctions as the court should deem appropriate.