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**PROPOSED AMENDMENT TO THE
OHIO RULES OF CRIMINAL PROCEDURE**

RULE 16. Discovery and Inspection.

(A) **Demand for discovery.** Upon written request ~~request~~ demand each party shall forthwith provide the discovery herein allowed. Motions for discovery shall certify that demand for discovery has been made and the discovery has not been provided. The prosecuting attorney shall, without demand, comply with division (B)(1)(f) of this rule.

(B) **Disclosure of evidence by the prosecuting attorney.**

(1) **Information subject to disclosure.** Subject to the work product exclusion set forth in division (B)(2) of this rule, and a protective order issued pursuant to division (E)(1) of this rule, the following information shall be disclosed.

(a) **Statement of defendant or co-defendant.** Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any of the following which are available to, or within the possession, custody, or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney:

(i) Relevant written or recorded statements made by the defendant or co-defendant, or copies thereof;

(ii) Written summaries of any oral statement, or copies thereof, made by the defendant or co-defendant to a prosecuting attorney or any law enforcement officer;

(iii) Recorded testimony of the defendant or co-defendant before a grand jury.

(b) **Defendant's prior record.** Upon motion of the defendant the court shall order the prosecuting attorney to furnish defendant a copy of defendant's prior criminal record, which is available to or within the possession, custody or control of the state.

(c) **Documents and tangible objects.**

(i) Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any reports, on any type of media, made by a law enforcement officer or agent of the state in relation to the case which are available to, or within the possession, custody, or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney.

(ii) Upon motion of the defendant the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph books, papers, documents, regardless of the media, photographs, tangible objects, buildings or places, or copies or portions thereof, available to or within the possession, custody or control of the state, and ~~which~~ that are material

47 to the preparation of his defense, or are intended for use by the prosecuting attorney as evidence
48 at the trial, or were obtained from or belong to the defendant.

49
50 **(d) Reports of examination and tests.** Upon motion of the defendant the court shall
51 order the prosecuting attorney to permit the defendant to inspect and copy or photograph any
52 results or reports of physical or mental examinations, and of scientific tests or experiments, made
53 in connection with the particular case, or copies thereof, available to or within the possession,
54 custody or control of the state, the existence of which is known or by the exercise of due
55 diligence may become known to the prosecuting attorney.

56
57 **(e) Witness names and addresses; record.**

58
59 **(i)** Upon motion of the defendant, the court shall order the prosecuting attorney to
60 furnish to the defendant a written list of the names and addresses of all witnesses whom the
61 prosecuting attorney intends to call at trial, together with any record of prior felony convictions
62 of any such witness, which record is within the knowledge of the prosecuting attorney.

63
64 **(ii)** Except as provided in division (D)(1)(e)(iii) of this rule, no attorney may disclose
65 or permit to be disclosed to a defendant, or any other person, the address or telephone number of
66 an alleged victim or witness whose name is disclosed to the attorney pursuant to division
67 (D)(1)(e)(i) of this rule unless specifically permitted to do so by the court after a hearing and a
68 showing of good cause.

69
70 **(iii)** Notwithstanding (D)(1)(e)(ii), an attorney may disclose or permit to be disclosed
71 the address or telephone number of a victim or witness to persons employed by the attorney or to
72 persons appointed by the court to assist in the preparation of a defendant's case if that disclosure
73 is required for that preparation. Persons provided this information by an attorney shall be
74 informed by the attorney that further dissemination of the information, except as provided by this
75 section, is prohibited.

76
77 **(iv)** If the defendant is acting as his or her own attorney, the court shall endeavor to
78 protect the address and telephone number of a victim or witness by providing for contact only
79 through a private investigator appointed by the court or by imposing other reasonable
80 restrictions, absent a showing of good cause as determined by the court.

81
82 **(v)** Names and addresses of witnesses shall not be subject to disclosure if the
83 prosecuting attorney certifies to the court that to do so may subject the witness, alleged victim, or
84 others, to physical or substantial economic harm or coercion.

85
86 **(vi)** Where a motion for discovery of the names and addresses of witnesses has been
87 provided to a defendant, the prosecuting attorney may move the court to perpetuate the testimony
88 of such witnesses in a hearing before the court, in which hearing the defendant shall have the
89 right of cross-examination. A record of the witness' testimony shall be made and shall be
90 admissible at trial as part of the state's case in chief, in the event the witness has become
91 unavailable through no fault of the state.

93 **(f) Disclosure of evidence favorable to defendant.** ~~Upon motion of the defendant~~
94 ~~before trial the court shall order~~ The prosecuting attorney to shall disclose to counsel for the
95 defendant all evidence, known or which by the exercise of due diligence may become known to
96 the prosecuting attorney, favorable to the defendant and material either to guilt or punishment.
97 The certification and the perpetuation provisions of subsection division (B)(1)(e) of this rule
98 apply to this subsection division (B)(1)(f) of this rule.
99

100 **(g) In-camera inspection of witness' statement** **Witness statements.** ~~Upon~~
101 ~~completion of a witness' direct examination at trial, the court on motion of the defendant, the~~
102 ~~court shall conduct an in-camera inspection of the witness' written or recorded statement with the~~
103 ~~defense attorney and order the prosecuting attorney to permit the defendant to inspect and copy~~
104 ~~or photograph any written or recorded statements made by anyone in relation to the case and that~~
105 ~~are available to or within the possession, custody, or control of the state, the existence of which~~
106 ~~is known, or by the exercise of due diligence may become known, by the prosecuting attorney~~
107 ~~present and participating, to determine the existence of inconsistencies, if any, between the~~
108 ~~testimony of such witness and the prior statement. The certification and perpetuation provisions~~
109 ~~of division (B)(1)(e) of this rule apply to witness statements provided pursuant to division~~
110 ~~(B)(1)(g) of this rule.~~
111

112 ~~If the court determines that inconsistencies exist, the statement shall be given to the~~
113 ~~defense attorney for use in cross-examination of the witness as to the inconsistencies.~~
114

115 ~~If the court determines that inconsistencies do not exist the statement shall not be given to~~
116 ~~the defense attorney and he shall not be permitted to cross-examine or comment thereon.~~
117

118 ~~Whenever the defense attorney is not given the entire statement, it shall be preserved in~~
119 ~~the records of the court to be made available to the appellate court in the event of an appeal.~~
120

121 **(2) Information not subject to disclosure.** ~~Except as provided in subsections~~
122 ~~division (B)(1)(a), (b), (d), (f), and (g) of this rule, this rule does not authorize the discovery or~~
123 ~~inspection of trial preparation reports, memoranda, or other internal documents made by the~~
124 ~~prosecuting attorney or his the prosecuting attorney's agents, in connection with the investigation~~
125 ~~or prosecution of the case, or of statements made by witnesses or prospective witnesses to state~~
126 ~~agents. To the extent that division (B)(1) of this rule requires the disclosure of trial preparation~~
127 ~~reports, memoranda, internal documents, or statements made by witnesses or prospective~~
128 ~~witnesses, a prosecuting attorney may redact those portions which discuss investigative plans~~
129 ~~and theory, deliberative and subjective analysis, or witness evaluations. To the extent that~~
130 ~~information is privileged or otherwise protected from disclosure by law, it is subject to the~~
131 ~~protective order provisions of division (E)(1) of this rule.~~
132

133 **(3) Grand jury transcripts.** ~~The discovery or inspection of recorded proceedings of~~
134 ~~a grand jury shall be governed by Rule Crim. R. 6(E) and subsection division (B)(1)(a) of this~~
135 ~~rule.~~
136

137 **(4) Witness list; no comment.** ~~The fact that a witness' name is on a list furnished~~
138 ~~under subsections divisions (B)(1)(b) and (f) of this rule, and that such witness is not called shall~~

139 not be commented upon at the trial. When the defendant is permitted by law to comment upon a
140 witness' absence from the trial, comment shall not include the fact that the person was listed as a
141 potential prosecution witness.

142
143 (C) **Disclosure of evidence by the defendant.**

144
145 (1) **Information subject to disclosure.** Subject to the work product exclusion set
146 forth in division (C)(2) of this rule, and a protective order issued pursuant to division (E)(1) of
147 this rule, the following information shall be disclosed.

148
149 (a) **Documents and tangible objects.** If on request or motion the defendant obtains
150 discovery under ~~subsection~~ division (B)(1)(c) of this rule, the court shall, upon motion of the
151 prosecuting attorney order the defendant to permit the prosecuting attorney to inspect and copy
152 or photograph books, papers, documents, photographs, tangible objects, or copies or portions
153 thereof, available to or within the possession, custody or control of the defendant and ~~which that~~
154 the defendant intends to introduce in evidence at the trial.

155
156 (b) **Reports of examinations and tests.** If on request or motion the defendant
157 obtains discovery under ~~subsection~~ division (B)(1)(d) of this rule, the court shall, upon motion of
158 the prosecuting attorney, order the defendant to permit the prosecuting attorney to inspect and
159 copy or photograph any results or reports of physical or mental examinations and of scientific
160 tests or experiments made in connection with the particular case, or copies thereof, available to
161 or within the possession or control of the defendant, and ~~which that~~ the defendant intends to
162 introduce in evidence at the trial, or ~~which that~~ were prepared by a witness whom the defendant
163 intends to call at the trial, when such results or reports relate to ~~his~~ the witnesses' testimony.

164
165 (c) **Witness names and addresses.** If on request or motion the defendant obtains
166 discovery under ~~subsection~~ division (B)(1)(e) of this rule, the court shall, upon motion of the
167 prosecuting attorney, order the defendant to furnish the prosecuting attorney a list of the names
168 and addresses of the witnesses ~~he~~ the defendant intends to call at the trial. Where a motion for
169 discovery of the names and addresses of witnesses has been made by the prosecuting attorney,
170 the defendant may move the court to perpetuate the testimony of such witnesses in a hearing
171 before the court in which hearing the prosecuting attorney shall have the right of cross-
172 examination. A record of the witness' testimony shall be made and shall be admissible at trial as
173 part of the defendant's case in chief in the event the witness has become unavailable through no
174 fault of the defendant.

175
176 (d) ~~**In-camera inspection of witness' statement**~~ **Witness statements.** ~~Upon~~
177 ~~completion of the direct examination, at trial, of a witness~~ If on request or motion the defendant
178 obtains discovery pursuant to division (B)(1)(g) of this rule, upon motion of the prosecuting
179 attorney, the court shall order the defendant to permit the prosecuting attorney to inspect and
180 copy or photograph any written or recorded statements made by anyone in relation to the case,
181 other than the defendant, which are available to, or within the possession, custody, or control of
182 the defendant. the court on motion of the prosecuting attorney shall conduct an in camera
183 inspection of the witness' written or recorded statement obtained by the defense attorney or his
184 agents with the defense attorney and prosecuting attorney present and participating, to determine

185 the existence of inconsistencies, if any, between the testimony of such witness and the prior
186 statement.

187
188 ~~If the court determines that inconsistencies exist, the statement shall be given to the~~
189 ~~prosecuting attorney for use in cross-examination of the witness as to the inconsistencies.~~

190
191 ~~If the court determines that inconsistencies do not exist the statement shall not be given to~~
192 ~~the prosecuting attorney and he shall not be permitted to cross-examine or comment thereon.~~

193
194 ~~Whenever the prosecuting attorney is not given the entire statement, it shall be preserved~~
195 ~~in the records of the court to be made available to the appellate court in the event of an appeal.~~

196
197 **(2) Information not subject to disclosure.** Except as provided in subsections
198 division (C)(1) (b) and (d) of this rule, this rule does not authorize the discovery ~~or inspection~~ of
199 trial preparation reports, memoranda, or other internal documents made by the defense attorney
200 or his agents of the defense attorney, in connection with the investigation or defense of the case,
201 or of statements made by witnesses or prospective witnesses to the defense attorney or his
202 agents. To the extent that division (C)(1) of this rule requires the disclosure of trial preparation
203 reports, memoranda, internal documents, or statements made by witnesses or prospective
204 witnesses, a defense attorney may redact those portions which discuss investigative plans and
205 theory, deliberative and subjective analysis, or witness evaluations. To the extent that
206 information is privileged or otherwise protected from disclosure by law, it is subject to the
207 protective order provisions of division (E)(1) of this rule.

208
209 **(3) Witness list; no comment.** The fact that a witness' name is on a list furnished
210 under ~~subsection~~ division (C)(1)(c) of this rule, and that the witness is not called shall not be
211 commented upon at the trial. When the prosecuting attorney is permitted by law to comment
212 upon a witness' absence from the trial, comment shall not include the fact that the person was
213 listed as a potential defense witness.

214
215 **(D) Continuing duty to disclose.** If, subsequent to compliance with a request or
216 order pursuant to this rule, and prior to or during trial, a party discovers additional matter ~~which~~
217 that would have been subject to discovery or inspection under the original request or order, ~~he~~
218 the party shall promptly make such matter available for discovery or inspection, or notify the
219 other party or ~~his~~ that party's attorney or the court of the existence of the additional matter, in
220 order to allow the court to modify its previous order, or to allow the other party to make an
221 appropriate request for additional discovery or inspection.

222
223 **(E) Regulation of discovery.**

224
225 **(1) Protective orders.** Upon a sufficient showing the court may at any time order
226 that the discovery ~~or inspection~~ be denied, restricted or deferred, or make such other order as is
227 appropriate. A court may order that any materials furnished to an attorney pursuant to this rule
228 shall remain in the attorney's exclusive custody, not be duplicated without leave of court, and
229 that the materials or information contained therein be used only for the preparation of the case.
230 Upon motion by a party the court may permit a party to make such showing, or part of such

231 showing, in the form of a written statement to be inspected by the judge alone. If the court enters
232 an order granting relief following such a showing, the entire text of the party's statement shall be
233 sealed and preserved in the records of the court to be made available to the appellate court in the
234 event of an appeal.

235
236 **(2) Time, place and manner of discovery and inspection.** An order of the court
237 granting relief under this rule shall specify the time, place and manner of making the discovery
238 and inspection permitted, and may prescribe such terms and conditions as are just.

239
240 **(3) Failure to comply.** If at any time during the course of the proceedings it is
241 brought to the attention of the court that a party has failed to comply with this rule or with an
242 order issued pursuant to this rule, the court may order such party to permit the discovery or
243 inspection, grant a continuance, or prohibit the party from introducing in evidence the material
244 not disclosed, or it may make such other order as it deems just under the circumstances. Before a
245 party may seek court enforcement, the party shall make an informal request of opposing counsel
246 for the desired materials and information. If within 15 days the opposing counsel fails to provide
247 the materials and information requested, the party may seek a court order. Upon a showing that
248 a party has not complied with this rule, and upon a showing that the moving party complied with
249 the informal discovery procedure provided in division (E)(1) or this rule, a court may make any
250 order necessary, including but not limited to immediate disclosure, contempt proceedings,
251 delaying or prohibiting the testimony of a witness or the presentation of real evidence,
252 continuance of the matter, or any other lawful order. Further, the court may advise the jury of
253 any failure or refusal to disclose and of any untimely disclosure. The court shall not dismiss a
254 charge pursuant to division (E)(1) or this rule unless required to do so by the Constitution of the
255 United States, or the Constitution of Ohio.

256
257 **(F) Time of motions.** A defendant shall make ~~his~~ a motion for discovery within
258 twenty-one days after arraignment or seven days before the date of trial, whichever is earlier, or
259 at such reasonable time later as the court may permit. The prosecuting attorney shall make ~~his~~ a
260 motion for discovery within seven days after defendant obtains discovery, three days before trial,
261 or upon the court's acknowledgment of the prosecuting attorney's response to defendant's
262 motion for discovery, whichever is earlier. The motion shall include all relief sought under this
263 rule. A subsequent motion may be made only upon showing of cause why such motion would be
264 in the interest of justice. In any particular case, in the interest of justice, the court may at any
265 time enlarge or diminish any time requirement of this rule. The court may establish by local
266 rule, or by pretrial order in any particular case in the interest of justice, any schedule which
267 secures the fair, impartial, speedy, and sure administration of justice; simplifies procedure; or
268 eliminates delay.

269
270 **(G) Local rule for misdemeanors.** Subject to division (E)(1) of this rule, a
271 municipal or county court may, by local rule, enlarge the scope, or vary the manner, medium and
272 timing of discovery for misdemeanor cases.

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