

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 23-05

(Amending Super. Ct. Crim. R. 16)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved amendments to Superior Court Rule of Criminal Procedure 16; and

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the amendments to this rule, to the extent that they modify the federal rule, have been approved by the District of Columbia Court of Appeals; it is

ORDERED, that Superior Court Rule of Criminal Procedure 16 is hereby amended as set forth below; and it is further

ORDERED, that the amendments shall take effect on September 29, 2023, and shall govern all proceedings thereafter commenced. The amendments also shall govern all expert disclosures in pending proceedings where the time to disclose for any party is September 29, 2023, or thereafter.

Rule 16. Discovery and Inspection

(a) GOVERNMENT'S DISCLOSURE.

(1) *Information Subject to Disclosure.*

(G) *Expert Witnesses.*

(i) Duty to Disclose. At the defendant's request, the government must disclose give to the defendant, in writing, the information required by Rule 16(a)(1)(G)(iii) for a written summary of any expert testimony that the government intends to use during its case-in-chief at trial or during its rebuttal to counter testimony that the defendant has timely disclosed under Rule 16(b)(1)(C). If the government requests discovery under Rule 16(b)(1)(C)(i) and the defendant complies, the government must, at the defendant's request, give—disclose to the defendant, in writing, the information required by Rule 16(a)(1)(G)(iii) for a written summary of expert testimony that the government intends to use as evidence at trial on the issue of the defendant's mental condition. ~~The summary provided under this subsection must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.~~

(ii) Time to Disclose. The court must set a time for the government to make its disclosures. The time must be sufficiently before trial to provide a fair opportunity for the defendant to meet the government's evidence.

(iii) Contents of the Disclosure. The disclosure for each expert witness must contain:

- a complete statement of all opinions that the government will elicit from the witness in its case-in-chief, or during its rebuttal to counter testimony that the defendant has timely disclosed under Rule 16(b)(1)(C);

- the bases and reasons for them;

- the witness's qualifications, including a list of all publications authored in the previous 10 years; and

- a list of all other cases in which, during the previous 4 years, the witness has testified as an expert at trial or by deposition.

(iv) Information Previously Disclosed. If the government previously provided a report under Rule 16(a)(1)(F) that contained information required by Rule 16(a)(1)(G)(iii), that information may be referred to, rather than repeated, in the expert-witness disclosure.

(v) Signing the Disclosure. The witness must approve and sign the disclosure, unless the government:

- states in the disclosure why it could not obtain the witness's signature through reasonable efforts; or

- has previously provided under Rule 16(a)(1)(F) a report, signed by the witness, that contains all the opinions and the bases and reasons for them required by Rule 16(a)(1)(G)(iii).

(vi) Supplementing and Correcting a Disclosure. The government must supplement or correct its disclosures in accordance with Rule 16(c).

(2) *Information Not Subject to Disclosure.* Except as permitted by Rule 16(a)(1)(A)-(D), (F), and (G), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting

the case. Nor does this rule authorize the discovery or inspection of statements made by prospective government witnesses except as provided in 18 U.S.C. § 3500.

(3) *Grand Jury Transcripts*. This rule does not apply to the discovery or inspection of a grand jury's recorded proceedings, except as provided in Rules 6, 12(f), 16(a)(1), and 26.2.

(b) DEFENDANT'S DISCLOSURE.

(1) *Information Subject to Disclosure*.

(C) *Expert Witnesses*.

(i) Duty to Disclose. ~~The defendant must, at~~At the government's request, the defendant must disclosegive to the government, in writing, the information required by Rule 16(b)(1)(C)(iii) for a written summary ofany expert testimony that the defendant intends to use as evidence during the defendant's case-in-chief at trial, if—

• ~~(i)~~ the defendant requests disclosure under Rule 16(a)(1)(G) and the government complies; or

• ~~(ii)~~ the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition.

~~This summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.~~

(ii) Time to Disclose. The court must set a time for the defendant to make the defendant's disclosures. The time must be sufficiently before trial to provide a fair opportunity for the government to meet the defendant's evidence.

(iii) Contents of the Disclosure. The disclosure for each expert witness must contain:

- a complete statement of all opinions that the defendant will elicit from the witness in its case-in-chief;

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- a list of all other cases in which, during the previous 4 years, the witness has testified as an expert at trial or by deposition.

(iv) Information Previously Disclosed. If the defendant previously provided a report under Rule 16(b)(1)(B) that contained information required by Rule 16(b)(1)(C)(iii), that information may be referred to, rather than repeated, in the expert-witness disclosure.

(v) Signing the Disclosure. The witness must approve and sign the disclosure, unless the defendant:

- states in the disclosure why it could not obtain the witness's signature through reasonable efforts; or

- has previously provided under Rule 16(a)(1)(F) a report, signed by the witness, that contains all the opinions and the bases and reasons for them required by Rule (b)(1)(C)(iii).

(vi) Supplementing and Correcting a Disclosure. The defendant must supplement or correct its disclosures in accordance with Rule 16(c).

COMMENT TO 2023 AMENDMENTS

Subsections (a)(1)(G) and (b)(1)(C) of this rule have been amended to incorporate the 2022 amendments to Federal Rule of Criminal Procedure 16 regarding the parties' obligations to disclose information about expert testimony.

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* * *

By the Court:

Date: July 12, 2023



Anita M. Josey-Herring
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
William Agosto, Director, Criminal Division
Library
Daily Washington Law Reporter
Pedro E. Briones, Associate General Counsel