

Rule 12.1. Notice of an Alibi Defense

(a) GOVERNMENT'S REQUEST FOR NOTICE AND DEFENDANT'S RESPONSE.

(1) *Government's Request.* An attorney for the government may request in writing that the defendant notify an attorney for the government of any intended alibi defense. The request must state the time, date, and place of the alleged offense.

(2) *Defendant's Response.* Within 14 days after the request, or at some other time the court sets, the defendant must serve written notice on an attorney for the government of any intended alibi defense. The defendant's notice must state:

(A) each specific place where the defendant claims to have been at the time of the alleged offense; and

(B) the name, address, and telephone number of each alibi witness on whom the defendant intends to rely.

(b) DISCLOSING GOVERNMENT WITNESSES.

(1) Disclosure.

(A) *In General.* If the defendant serves a Rule 12.1(a)(2) notice, an attorney for the government must disclose in writing to the defendant or the defendant's attorney:

(i) the name of each witness—and the address and telephone number of each witness other than a victim—that the government intends to rely on to establish that the defendant was present at the scene of the alleged offense; and

(ii) each government rebuttal witness to the defendant's alibi defense.

(B) *Victim's Address and Telephone Number.* If the government intends to rely on a victim's testimony to establish that the defendant was present at the scene of the alleged offense and the defendant establishes a need for the victim's address and telephone number, the court may:

(i) order the government to provide the information in writing to the defendant or the defendant's attorney; or

(ii) fashion a reasonable procedure that allows preparation of the defense and also protects the victim's interests.

(2) *Time to Disclose.* Unless the court directs otherwise, an attorney for the government must give its Rule 12.1(b)(1) disclosure within 14 days after the defendant serves notice of an intended alibi defense under Rule 12.1(a)(2), but no later than 14 days before trial.

(c) CONTINUING DUTY TO DISCLOSE.

(1) *In General.* Both an attorney for the government and the defendant must promptly disclose in writing to the other party the name of each additional witness—and the address and telephone number of each additional witness other than a victim— if:

(A) the disclosing party learns of the witness before or during trial; and

(B) the witness should have been disclosed under Rule 12.1(a) or (b) if the disclosing party had known of the witness earlier.

(2) *Address and Telephone Number of an Additional Victim Witness.* The address and telephone number of an additional victim witness must not be disclosed except as provided in Rule 12.1 (b)(1)(B).

(d) **EXCEPTIONS.** For good cause, the court may grant an exception to any requirement of Rule 12.1(a)–(c).

(e) FAILURE TO COMPLY. If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the defendant's alibi. This rule does not limit the defendant's right to testify.

(f) INADMISSIBILITY OF WITHDRAWN INTENTION. Evidence of an intention to rely on an alibi defense, later withdrawn, or of a statement made in connection with that intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2008 and 2009 amendments to *Federal Rule of Criminal Procedure 12.1*. The 2008 amendments to sections (b) and (c) implement the federal Crime Victims' Rights Act (18 U.S.C. § 3771). Also, in accordance with the 2009 amendments to the federal rule, the 10-day time periods were expanded to 14 days—an amendment that reflects the time-calculation changes made to Rule 45.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule.