

## **Rule 26.2. Producing a Witness's Statement**

(a) **MOTION TO PRODUCE.** After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the government or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony.

(b) **PRODUCING THE ENTIRE STATEMENT.** If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.

(c) **PRODUCING A REDACTED STATEMENT.** If the party who called the witness claims that the statement contains information that is privileged or does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any privileged or unrelated portions, the court must order delivery of the redacted statement to the moving party. If the defendant objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

(d) **RECESS TO EXAMINE A STATEMENT.** The court may recess the proceedings to allow time for a party to examine the statement and prepare for its use.

(e) **SANCTION FOR FAILURE TO PRODUCE OR DELIVER A STATEMENT.** If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the government disobeys the order, the court must declare a mistrial if justice so requires.

(f) **STATEMENT DEFINED.** As used in this rule, a witness's "statement" means:

(1) a written statement that the witness makes and signs, or otherwise adopts or approves;

(2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or

(3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

(g) **SCOPE.** This rule applies at trial, at a suppression hearing under Rule 12, and to the extent specified in the following rules:

(1) Rule 5.1(f) (preliminary hearing);

(2) Rule 32(c) (sentencing);

(3) Rule 32.1(c) (hearing to revoke or modify probation);

(4) Rule 46(f) (detention hearing); and

(5) Rule 8(c) of the Rules Governing Proceedings Under D.C. Code § 23-110.

### **COMMENT TO 2017 AMENDMENTS**

Section (g) has been amended to make this rule applicable to preliminary hearings.

### **COMMENT TO 2016 AMENDMENTS**

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in two respects. First, consistent with the former

rule and unlike its federal counterpart, paragraph (g) omits preliminary hearings from the scope of the rule. Second, subparagraph (g)(4), which is new to this rule, refers to the local Rules Governing Proceedings Under D.C. Code § 23-110.

The last sentence of paragraph (c) is new to this and the federal Rule. It requires that the court retain, under seal, the entirety of a witness's statement whenever parts are excised over the objection of the defendant. The former rule required that the prosecutor retain such a statement.