**Rule 216 — Proposed Revisions on Behalf of Municipal Prosecutors**

**Version 2-3-2020**

**[REDLINE VERSION]**

**Rule 216. Discovery and Inspection.**

1. **By Defendant.** Upon the motion of a defendant or upon the court’s own motion at any time after the filing of the complaint or summons and complaint the court ~~may~~ shall order the prosecution to ~~permit~~ provide the defendant ~~to inspect and copy or photograph~~ any books, papers, documents, photographs, videos, recordings, or other tangible objects that are within the prosecution’s possession and control, upon a showing that the items sought may be material to the preparation of the defense and that the request is reasonable. The order shall specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just.
2. **Witness’s Statements.** At any time after the filing of the complaint or summons and complaint, upon the request of a defendant or upon the order of court, the prosecution shall disclose to the defendant the names and addresses of persons whom the prosecution intends to call as witnesses at the hearing or trial, together with any witness statements, if such information is not already contained in discovery.
3. **~~Irrelevant Matters.~~** ~~If the prosecution claims that any material or statement ordered to be produced under this rule contains matter which does not relate to the subject matter of the witness's testimony, the court shall order it to deliver the statement for the court's inspection in chambers. Upon such delivery the court shall excise the portions of the statement which do not relate to the subject matter of the witness's testimony, then the court shall direct delivery of the statement to the defendant.~~

**(c)** **Discretionary Disclosures.**

(1) The court in its discretion may, upon motion, require disclosure to the defense of relevant material and information not covered by Part (a), upon a showing by the defense that the request is reasonable.

(2) The court may deny disclosure authorized by this section if it finds that there is substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to the defense.

(3) Where the interests of justice would be served, the court may order the prosecution to disclose the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinions and the bases and reasons therefor, including results of physical or mental examination and of scientific tests, experiments, or comparisons. The intent of this section is to allow the defense sufficient meaningful information to conduct effective cross-examination under [CRE 705](https://advance.lexis.com/document/?pdmfid=1000516&crid=f1c3865b-a014-4ab5-a59a-b2e585dcdb7d&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5TDP-D2D0-004D-113J-00000-00&pdtocnodeidentifier=AAGAABAABAAEAAI&ecomp=5d5dk&prid=9924390e-c0fc-4b4e-b1bc-8e69f9391ce2).

**(d)** **Statement Defined.** The term "statement" as used in sections (b) ~~and (c)~~ of this Rule in relation to any witness who may be called by the prosecution means:

**(1)** A written statement made by such witness and signed or otherwise adopted or approved by the witness;

**(2)** A mechanical, electrical, or other recording, or a transcription thereof, which is a recital of an oral statement made by such witness; or

**(3)** Stenographic or written statements or notes which are in substance recitals of an oral statement made by such witness and which were reduced to writing contemporaneously with the making of such oral statement.

**(e) Matters not Subject to Disclosure.**

(1) Work Product.Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting attorney or members of his or her legal staff.

(2) Informants. Disclosure shall not be required of an informant’s identity where his or her identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.

**(f) Nature of Defense.** Upon the motion of the prosecution or upon the court’s own motion, subject to constitutional limitations, the defense shall disclose to the prosecution the nature of any defense, including alibi, which the defense intends to use at trial. The defense shall also disclose the names and addresses of persons whom the defense intends to call as witnesses at trial. At the entry of the not guilty plea, the court shall set a deadline for such disclosure.

1. Notice of Alibi. If the court orders the defense to disclose the nature of defense pursuant to Subsection (f) and the defense intends to introduce evidence that the defendant was at a place other than the location of the offense, the defense shall serve upon the prosecuting attorney a statement in writing specifying the place where he or she claims to have been and the names and addresses of the witnesses he or she will call to support the defense of alibi by the court’s deadline or no later than 14 days before trial. Upon receiving this statement, the prosecuting attorney shall advise the defense of the names and addresses of any additional witnesses who may be called to refute such alibi as soon as practicable after their names become known. Neither the prosecuting attorney nor the defense shall be permitted at the trial to introduce evidence inconsistent with the specification, unless the court for good cause and upon just terms permits the specification to be amended. If the defense fails to make the specification required by this section, the court shall exclude evidence in his behalf that he or she was at a place other than that specified by the prosecuting attorney unless the court is satisfied upon good cause shown that such evidence should be admitted.

**(g) Cost and Location of Discovery.** The cost of duplicating any material discoverable under this rule shall be borne by the party receiving the material. Copies of any discovery provided to a defendant by court appointed counsel shall be paid for by the defendant.

**(h)** **Additional Rules.** Municipal courts may make such additional rules for discretionary or mandatory discovery by the defense or by the prosecution as are consistent with these rules and with any applicable law.

**[CLEAN VERSION]**

**Rule 216. Discovery and Inspection.**

1. **By Defendant.** Upon the motion of a defendant or upon the court’s own motion at any time after the filing of the complaint or summons and complaint the court shall order the prosecution to provide the defendant any books, papers, documents, photographs, videos, recordings, or other tangible objects that are within the prosecution’s possession and control, upon a showing that the items sought may be material to the preparation of the defense and that the request is reasonable. The order shall specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just.
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(2) The court may deny disclosure authorized by this section if it finds that there is substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to the defense.

(3) Where the interests of justice would be served, the court may order the prosecution to disclose the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinions and the bases and reasons therefor, including results of physical or mental examination and of scientific tests, experiments, or comparisons. The intent of this section is to allow the defense sufficient meaningful information to conduct effective cross-examination under [CRE 705](https://advance.lexis.com/document/?pdmfid=1000516&crid=f1c3865b-a014-4ab5-a59a-b2e585dcdb7d&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5TDP-D2D0-004D-113J-00000-00&pdtocnodeidentifier=AAGAABAABAAEAAI&ecomp=5d5dk&prid=9924390e-c0fc-4b4e-b1bc-8e69f9391ce2).

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