

FBA WDWA Local Rules Committee - Proposed Amendments to Local Criminal Rules  
April 2017

<b>CrR 1 SCOPE; DEFINITIONS</b>																																																																									
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<b>CrR 1</b>			
<b>SCOPE; DEFINITIONS</b>			
LCR 83.1	Depositions	LCR 79(f)	Electronic Devices in the Courthouse
LCR 83.2(b)	Attorneys; Admission to Practice	LCR 79(g)	Files-Custody and Withdrawal
LCR 83.3	Withdrawal of Attorneys	LCR 83.1	Custody and Disposition of Exhibits, Depositions
LCR 83.4	Standards of Professional Conduct; Continuing Eligibility to Practice; Attorney Discipline	LCR 83.2(b)	Attorneys; Admission to Practice
LCR 85	Legal Interns	LCR 83.3	Withdrawal of Attorneys
	Title and Citations	LCR 83.4	Standards of Professional Conduct; Continuing Eligibility to Practice; Attorney Discipline
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**CrR 12**  
**PLEADINGS AND PRETRIAL MOTIONS**

\* \* \*

**(b) Motion Procedure**

\* \* \*

(8) Emergency Motions. Motions to shorten time are abolished. If action is necessary and the judge assigned to the case is unavailable any other judge may hear and dispose of the matter requiring immediate attention, but such action shall not constitute reassignment of the case or proceeding.

\* \* \*

**(b) Motion Procedure**

\* \* \*

(8) Emergency Motions. Motions to shorten time are abolished. If immediate action is necessary, parties shall use the procedures outlined in LCR 7(i). ~~If and~~ the judge assigned to the case is unavailable, any other judge may hear and dispose of the matter requiring immediate attention, but such action shall not constitute reassignment of the case or proceeding.

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<b>CrR 12.5</b> <b>NOTICE OF ENTRAPMENT DEFENSE</b>	
<b>NEW CrR 12.5</b>	In addition to the requirements of Fed. R. Evid. 404(b), if, during the discovery conference or thereafter, the attorney for the defendant advises the attorney for the government that the defense is one of entrapment and provides a synopsis of the evidence of that defense, the attorney for the government shall, within seven days or two weeks prior to trial, whichever is later, disclose a synopsis of any other crimes, wrongs, or acts about which the government has information and which is relevant to said defense and intended for use by the government in its case-in-chief or in rebuttal.

Moved from Current Rule 16 - identical language.

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**CrR 16\*\***  
**DISCOVERY AND INSPECTION**

**[NOTE THAT A CLEAN VERSION OF THE PROPOSED REVISED RULE IS SET OUT BELOW.]**

The purposes of this rule are to expedite the transfer of discoverable material contemplated by the Federal Rules of Criminal Procedure between opposing parties in criminal cases and to ensure that pretrial discovery motions to the court are filed only when the discovery procedures outlined herein have failed to result in the exchange of all legitimately discoverable material. It is the intent of the court to encourage complete and open discovery consistent with applicable statutes, case law, and rules of the court at the earliest practicable time. Nothing in this rule should be construed as a limitation on the court's authority to order additional discovery.

**(a) Discovery Conference**

At every arraignment at which the defendant enters a plea of not guilty, or other time set by the court, the attorney for the defendant shall notify the court and the attorney for the United States, on the record, or thereafter in writing, whether discovery by the defendant is requested. If so requested, within fourteen days after said attorney for the defendant and the attorney for the government shall confer in order to comply with Fed. R. Crim. P. 16, and make available to the opposing party the items in their custody or control or which by due diligence may become known to them. This conference shall be in person. If, however, it is impractical to meet in person, the conference may be conducted via telephone.

**(1) Discovery from the Government.**

At the discovery conference the attorney for the government shall comply with the government's obligations under Rule 16 including, but not limited to, the following:

The purposes of this rule are to expedite the transfer of discoverable material contemplated by the Federal Rules of Criminal Procedure between opposing parties in criminal cases and to ensure that pretrial discovery motions to the court are filed only when the discovery procedures outlined herein have failed to result in the exchange of all legitimately discoverable material. It is the intent of the court to encourage complete and open discovery consistent with applicable statutes, case law, and rules of the court at the earliest practicable time. Nothing in this rule should be construed as a limitation on the court's authority to order additional discovery.

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[\(1\) Proposed Topics for Discussion.](#)

[During the conference, or as soon as practicable thereafter considering the size and complexity of the case, the parties should consider ways in which to ensure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.](#)

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(A) Permit defendant's attorney to inspect and copy or photograph any relevant written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody, or control of the government.

(B) With respect to oral statements made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent:

(i) Provide that portion of any written record containing the substance of any such relevant oral statement made by the defendant; and

(ii) Provide the substance of any other such relevant oral statement made by the defendant which the government intends to offer in evidence at the trial.

(C) Permit defendant's attorney to inspect and copy or photograph the defendant's Federal Bureau of Investigation Identification Sheet, and any other state, county, or local criminal record information concerning the defendant;

(D) Permit defendant's attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies of portions thereof, which are within the possession, custody, or control of the government, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the

Topics for discussion may include:

(A) Whether there is likely to be additional discovery material to be provided and if so:

(i) The expected timing for the production of that discovery;

(ii) The expected timing for the production of reciprocal discovery;

(iii) Whether there are issues to be resolved regarding the production of electronically stored information;

(B) Whether there are likely to be affirmative defenses and the timing of those disclosures;

(C) Whether the case can be resolved through plea negotiations and the appropriate timing for making and responding to plea offers;

(D) Whether consideration should be given to proposing a scheduling order to the Court to reflect discovery agreements and to propose dates for various filings different from those already required by the rules, including the following:

(i) The filing and responding to pretrial motions (*see* CrR 12(c)), and motions in limine (*see* CrR 23.2);

(ii) The exchange of exhibit lists and witness lists; and

(iii) The timing of expert disclosure;

(E) Whether the parties have a different view of the length of

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**DISCOVERY AND INSPECTION**

trial, or were obtained from or belong to the defendant;

(E) Permit defendant's attorney to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are material to the preparation of the defense or are intended for use by the government as evidence in chief at trial;

(F) Permit defendant's attorney to inspect and copy or photograph any relevant recorded testimony of the defendant before the Grand Jury which relates to the offense charged;

(G) Permit defendant's attorney to inspect and copy or photograph any photographs used in any photograph lineup, show up, photo spread, or any other identification proceedings or, if no such photographs can be produced, the government shall notify the defendant's attorney whether any such identification proceeding has taken place and the results thereof;

(H) Permit defendant's attorney to inspect and copy or photograph any search warrants and supporting affidavits which resulted in the seizure of evidence which is intended for use by the government as evidence in chief at trial or which was obtained from, or belongs to, the defendant;

(I) Inform the defendant's attorney whether any physical evidence intended to be offered in the government's case-in-chief, the admissibility of which the defendant may have standing to

trial than originally estimated by the United States;

(F) Whether the trial date set at arraignment is realistic, and if not what a realistic date might be;

(G) Whether it would be beneficial to have one or more status conferences in the case, and the schedule for such conferences (see CrR 17.1(a)).

(+2) Discovery from the Government.

At or before the discovery conference the attorney for the government shall comply with the government's obligations under Rule Fed. R. Crim. P. 16(a) including, but not limited to, the following:

(A) Permit defendant's attorney to inspect and copy or photograph any relevant written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody, or control of the government.

[This section is a near duplicate of Fed. R. Crim. P. 16(a)(1)(A)&(B)]

(B) With respect to oral statements made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent:

(i) Provide that portion of any written record containing the substance of any such relevant oral statement made by the defendant; and

(ii) Provide the substance of any other such relevant oral statement made by the defendant which the government

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challenge, was seized by the government pursuant to any exception to the warrant requirement;

(J) Advise whether the defendant was a subject of any electronic eavesdrop, wire tap, or any other interception of wire or oral communications as defined by 18 U.S.C. § 2510, et seq., during the course of the investigation of the case;

(K) Advise the attorney for the defendant and provide, if requested, evidence favorable to the defendant and material to the defendant's guilt or punishment to which he is entitled pursuant to Brady v. Maryland and United States v. Agurs; and

(L) Advise the attorney for the defendant whether or not the government will provide a list of the names and addresses of the witnesses whom it intends to call in its case-in-chief at trial.

The attorney for the government is not required, however, to produce any statements of witnesses which fall within the purview of 18 U.S.C. § 3500 and Fed. R. Crim. P. 26.2, until such time as required under those provisions.

(2) Discovery From Defendant. At the discovery conference, the defendant's attorney shall:

(A) Permit the attorney for the government to inspect and copy or photograph all books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial;

~~intends to offer in evidence at the trial.~~

[This section is a near duplicate of Fed. R. Crim. P. 16(a)(1)(A) & (B)]

~~(C) Permit defendant's attorney to inspect and copy or photograph the defendant's Federal Bureau of Investigation Identification Sheet, and any other state, county, or local criminal record information concerning the defendant;~~

[This section is a near duplicate of Fed. R. Crim. P. 16(a)(1)(D)]

~~(D) Permit defendant's attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies of portions thereof, which are within the possession, custody, or control of the government, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant;~~

[This section is a near duplicate of Fed. R. Crim. P. 16(a)(1)(E)]

~~(E) Permit defendant's attorney to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are material to the preparation of the defense or are intended for use by the government as evidence in chief at trial;~~

[This section is a near duplicate of Fed. R. Crim. P.



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(B) Permit the attorney for the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony;

(C) Inform the attorney for the government, in writing, if requested, whether the nature of the defense is alibi. If a defendant intends to rely on the defense of alibi, and the attorney for the government has made the demand outlined in Fed. R. Crim. P. 12.1(a), at least fourteen days before the pretrial conference, the attorney for the defendant shall disclose the substance of any alibi intended to be presented by the defendant and state the specific place or places at which the defendant claims to have been at the time of the alleged offense, and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi as required by Rule 12.1, within fourteen days thereafter, but in no event less than fourteen days before trial, unless the court otherwise directs. The attorney for the government shall serve upon the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(D) Inform the attorney for the government whether the nature of the defense is insanity. If a defendant intends to rely upon

16(a)(1)(F)

~~(F) Permit defendant's attorney to inspect and copy or photograph any relevant recorded testimony of the defendant before the Grand Jury which relates to the offense charged;~~

[This section is a near duplicate of Fed. R. Crim. P. 16(a)(1)(B)(iii)]

~~(G)~~ Permit defendant's attorney to inspect and copy or photograph any photographs used in any photograph lineup, show up, photo spread, or any other identification proceedings or, if no such photographs can be produced, the government shall notify the defendant's attorney whether any such identification proceeding has taken place and the results thereof;

~~(H)~~ Permit defendant's attorney to inspect and copy or photograph any search warrants and supporting affidavits which resulted in the seizure of evidence which is intended for use by the government as evidence in chief at trial or which was obtained from, or belongs to, the defendant;

~~(I)~~ Inform the defendant's attorney whether any physical evidence intended to be offered in the government's case-in-chief, the admissibility of which the defendant may have standing to challenge, was seized by the government pursuant to any exception to the warrant requirement;

~~(J)~~ Advise whether the defendant was a subject of any electronic eavesdrop, wire tap, or any other interception of wire or oral communications as defined by 18 U.S.C. § 2510, et seq., during the course of the investigation of the case;

~~(K)~~ Advise the attorney for the defendant and provide, if

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the defense of insanity at the time of the alleged crime or intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall give written notice thereof to the government and file a copy of such notice with the clerk.

(E) Advise the attorney for the government whether or not the defendant will provide the names and addresses of the witnesses whom the defense intends to call in its case-in-chief at trial.

(3) Substantial Expenses Relating to Discovery

(A) At the discovery conference, counsel shall discuss whether discovery in the case might involve substantial expense, including the expense of storage, distribution, or organization of electronically stored information. Counsel shall discuss whether a discovery coordinator for the case should be appointed.

(B) If counsel for any party believes that the case might involve substantial expense or that a discovery coordinator for the case should be appointed, the parties shall submit to the court, within seven days after the discovery conference, a joint status report reciting the parties' respective views on these issues.

(C) If, after the discovery conference, counsel for any party believes that circumstances have changed, counsel shall confer and the parties shall, if appropriate, file a joint status report reciting the parties' respective views. See CrR17.1(a).

**(b) Entrapment Defenses and the Discovery of Other Crimes, Wrongs,**

requested, evidence favorable to the defendant and material to the defendant's guilt or punishment to which he is entitled pursuant to Brady v. Maryland and [United States v. Agursits progeny](#); and

~~(E)~~ Advise the attorney for the defendant whether or not the government will provide a list of the names and addresses of the witnesses whom it intends to call in its case-in-chief at trial.

The attorney for the government is not required, however, to produce any statements of witnesses which fall within the purview of 18 U.S.C. § 3500 and Fed. R. Crim. P. 26.2, until such time as required under those provisions.

~~(2)~~ Discovery From Defendant. At or before the discovery conference, in addition to the requirements in Fed. R. Crim. P. 16(b), the defendant's attorney shall advise the attorney for the government whether or not the defendant will provide the names and addresses of the witnesses whom the defense intends to call in its case-in-chief at trial.

~~(A) Permit the attorney for the government to inspect and copy or photograph all books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial;~~

**[This section is a near duplicate of Fed. R. Crim. P. 16(b)(1)(A)(i) and (ii)]**

~~(B) Permit the attorney for the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in~~

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**or Acts Admissible Pursuant to Fed. R. Evid. 404(b)**

In addition to the requirements of Fed. R. Evid. 404(b), if, during the discovery conference or thereafter, the attorney for the defendant advises the attorney for the government that the defense is one of entrapment and provides a synopsis of the evidence of that defense, the attorney for the government shall, within seven days or two weeks prior to trial, whichever is later, disclose a synopsis of any other crimes, wrongs, or acts about which the government has information and which is relevant to said defense and intended for use by the government in its case-in-chief or in rebuttal.

**(c) Items Not Subject to Disclosure**

This rule does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant or the defendant's attorney or agents in connection with the investigation or defense of the case, or of statements made by prospective government or defense witnesses, to the defendant, the defendant's agents, or attorneys.

**(d) Continuing Duty to Disclose**

If, prior to or during trial, any party discovers additional evidence not previously disclosed which is subject to discovery or inspection under this rule, such party shall promptly notify that other party's attorney of the existence of additional evidence or material.

**(e) Declination of Disclosure**

If, in the judgment of the attorney for the government or of the defendant's attorney, it would not be in the interest of justice to make any one or more

~~connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony;~~

[This section is a near duplicate of Fed. R. Crim. P. 16(b)(1)(B)&(C)]

~~(C) Inform the attorney for the government, in writing, if requested, whether the nature of the defense is alibi. If a defendant intends to rely on the defense of alibi, and the attorney for the government has made the demand outlined in Fed. R. Crim. P. 12.1(a), at least fourteen days before the pretrial conference, the attorney for the defendant shall disclose the substance of any alibi intended to be presented by the defendant and state the specific place or places at which the defendant claims to have been at the time of the alleged offense, and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi as required by Rule 12.1, within fourteen days thereafter, but in no event less than fourteen days before trial, unless the court otherwise directs. The attorney for the government shall serve upon the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.~~

[This section is a near duplicate of Fed. R. Crim. P. 12.1]]

~~(D) Inform the attorney for the government whether the nature of the defense is insanity. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime or intends to~~

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of the disclosures set forth in the subsections of this rule, disclosure may be declined. A declination of any requested disclosure shall be in writing, directed to opposing counsel. In the event either the attorney for the government or attorney for the defendant declines to provide the names and addresses of witnesses, such a declination shall, in addition, state the particular reasons for the declination. The declination shall be served on opposing counsel and a copy filed with the court at least seven days before the pretrial motions deadline.

**(f) Statements of Witnesses**

Statements of witnesses, including material covered by Fed. R. Crim. P. 26.2, 18 U.S.C. § 3500, and Fed. R. Crim. P. 6, are to be exchanged:

- (1) During the time of trial as provided by Fed. R. Crim. P. 26.2, and 18 U.S.C. § 3500; or
- (2) At any time if the parties agree; and
- (3) Production of statements of witnesses at a hearing on a motion to suppress evidence will be governed by Fed. R. Crim. P. 12(h).

**(g) Exchange of Exhibit Lists**

At least fourteen days before trial, the parties shall exchange a list of exhibits which they intend to introduce during the presentation of their respective cases-in-chief.

**(h) Further Discovery or Inspection**

If discovery or inspection beyond that provided for above is sought by either counsel, the attorney for the government and the defendant's attorney shall confer with a view toward satisfying these requests in a cooperative atmosphere without recourse to the court. The request for

~~introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall give written notice thereof to the government and file a copy of such notice with the clerk.~~

~~[Moved to CrR 12.2.]~~

~~(A) Advise the attorney for the government whether or not the defendant will provide the names and addresses of the witnesses whom the defense intends to call in its case-in-chief at trial.~~

~~[Moved to CrR 16(a)(3)]~~

~~(34) Substantial Expenses Relating to Discovery.~~

~~(A) At the discovery conference, counsel shall discuss whether discovery in the case might involve substantial expense, including the expense of storage, distribution, or organization of electronically stored information. Counsel shall discuss whether a discovery coordinator for the case should be appointed.~~

~~(B) If counsel for any party believes that the case might involve substantial expense or that a discovery coordinator for the case should be appointed, the parties shall submit to the court, within seven days after the discovery conference, a joint status report reciting the parties' respective views on these issues.~~

~~(C) If, after the discovery conference, counsel for any party believes that circumstances have changed, counsel shall confer and the parties shall, if appropriate, file a joint status report reciting the parties' respective views. See CrR 17.1(a).~~

~~(b) Entrapment Defenses and the Discovery of Other Crimes, Wrongs, or~~

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further discovery may be oral or written and the response shall be a like manner. Only in the event that either party's request for any discovery or inspection cannot be satisfied without recourse to the court may either party move for additional discovery or inspection.

Any motion for further discovery or inspection shall be filed in compliance with these Local Criminal Rules.

**(i) Certification of Compliance With This Rule**

All motions for discovery or inspection shall contain a certification that counsel have engaged in a discovery conference and discussed the subject matter of each motion and have been unable to reach agreement of the resolution of the issues. The certification for the motion shall set forth: (1) The statement that the prescribed conference was held; (2) the date of the conference; (3) the names of the parties who attended the conference; and (4) the matters which are in dispute and which require the determination of the court.

The filing of any such motion for further discovery or inspection which does not include the required certification may result in summary denial of the motion or other sanctions in the discretion of the court.

**(j) Modification of Time Periods**

All time periods set forth in this rule may be modified by written agreement by the defendant's attorney and the attorney for the government or by order of the court.

**(k) Other Pretrial Motions**

Except for discovery motions covered by this order, all other pretrial motions shall be filed in accordance with the Federal Rules of Criminal Procedure and the Local Rules W.D. Wash. which are in effect at the time

~~Acts Admissible Pursuant to Fed. R. Evid. 404(b)~~

~~In addition to the requirements of Fed. R. Evid. 404(b), if, during the discovery conference or thereafter, the attorney for the defendant advises the attorney for the government that the defense is one of entrapment and provides a synopsis of the evidence of that defense, the attorney for the government shall, within seven days or two weeks prior to trial, whichever is later, disclose a synopsis of any other crimes, wrongs, or acts about which the government has information and which is relevant to said defense and intended for use by the government in its case in chief or in rebuttal.~~

~~[Moved to new CrR 12.5.]~~

~~(c) Items Not Subject to Disclosure~~

~~This rule does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant or the defendant's attorney or agents in connection with the investigation or defense of the case, or of statements made by prospective government or defense witnesses, to the defendant, the defendant's agents, or attorneys.~~

~~[This section is a near duplicate of Fed. R. Crim. P. 16(b)(2).]~~

~~(d) Continuing Duty to Disclose~~

~~If, prior to or during trial, any party discovers additional evidence not previously disclosed which is subject to discovery or inspection under this rule, such party shall promptly notify that other party's attorney of the existence of additional evidence or material.~~

~~[This section is a near duplicate of Fed. R. Crim. P. 16(c).]~~

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the pretrial motions are filed.

\*\* A copy of the Best Practices for Electronic Discovery in Criminal Cases, adopted March 21, 2013, is available at <http://www/wawd.uscourts.gov>.

**(eb) Declination of Disclosure**

If, in the judgment of the attorney for the government or of the defendant's attorney, it would not be in the interest of justice to make any one or more of the disclosures set forth in the subsections of this rule, disclosure may be declined. A declination of any requested disclosure shall be in writing, directed to opposing counsel. In the event either the attorney for the government or attorney for the defendant declines to provide the names and addresses of witnesses, such a declination shall, in addition, state the particular reasons for the declination. The declination shall be served on opposing counsel and a copy filed with the court at least seven days before the pretrial motions deadline.

**(fc) Statements of Witnesses**

Statements of witnesses, including material covered by Fed. R. Crim. P. 26.2, 18 U.S.C. § 3500, and Fed. R. Crim. P. 6, are to be exchanged:

- (1) During the time of trial as provided by Fed. R. Crim. P. 26.2, and 18 U.S.C. § 3500; or
- (2) At any time if the parties agree; and
- (3) Production of statements of witnesses at a hearing on a motion to suppress evidence will be governed by Fed. R. Crim. P. 12(h).

**(gd) Exchange of Exhibit Lists**

At least fourteen days before trial, the parties shall exchange a list of exhibits which they intend to introduce during the presentation of their respective cases-in-chief.

**(he) Further Discovery or Inspection**

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If discovery or inspection beyond that provided for above is sought by either counsel, the attorney for the government and the defendant's attorney shall confer with a view toward satisfying these requests in a cooperative atmosphere without recourse to the court. The request for further discovery may be oral or written and the response shall be in a like manner. Only in the event that either party's request for any discovery or inspection cannot be satisfied without recourse to the court may either party move for additional discovery or inspection.

Any motion for further discovery or inspection shall be filed in compliance with these Local Criminal Rules.

**(f) Certification of Compliance With This Rule**

All motions for discovery or inspection shall contain a certification that counsel have engaged in a discovery conference and discussed the subject matter of each motion and have been unable to reach agreement of the resolution of the issues. The certification for the motion shall set forth: (1) The statement that the prescribed conference was held; (2) the date of the conference; (3) the names of the parties who attended the conference; and (4) the matters which are in dispute and which require the determination of the court.

The filing of any such motion for further discovery or inspection which does not include the required certification may result in summary denial of the motion or other sanctions in the discretion of the court.

**(g) Modification of Time Periods**

All time periods set forth in this rule may be modified by written agreement by the defendant's attorney and the attorney for the government or by order of the court.

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<b>CrR 16**</b> <b>DISCOVERY AND INSPECTION</b>	
	<p><b>(kh) Other Pretrial Motions</b></p> <p>Except for discovery motions covered by this order, all other pretrial motions shall be filed in accordance with the Federal Rules of Criminal Procedure and the Local Rules W.D. Wash. which are in effect at the time the pretrial motions are filed.</p> <p>** <a href="http://www/wawd.uscourts.gov">See Electronic Discovery and Technology Requirements for Criminal Cases, adopted January 2017</a>, available at <a href="http://www/wawd.uscourts.gov">http://www/wawd.uscourts.gov</a>.</p>

***Clean Version of Proposed New Rule***

**Proposed Revised Rule without Redline**

**CrR 16\*\* - Discovery and Inspection**

The purposes of this rule are to expedite the transfer of discoverable material contemplated by the Federal Rules of Criminal Procedure between opposing parties in criminal cases and to ensure that pretrial discovery motions to the court are filed only when the discovery procedures outlined herein have failed to result in the exchange of all legitimately discoverable material. It is the intent of the court to encourage complete and open discovery consistent with applicable statutes, case law, and rules of the court at the earliest practicable time. Nothing in this rule should be construed as a limitation on the court's authority to order additional discovery.

**(a) Discovery Conference**

At every arraignment at which the defendant enters a plea of not guilty, or other time set by the court, the attorney for the defendant shall notify the court and the attorney for the United States, on the record, or thereafter in writing, whether discovery by the defendant is requested. If so requested, within fourteen days after said attorney for the defendant and the attorney for the government shall confer in order to comply with Fed. R. Crim. P. 16, and make available to the opposing party the items in their custody or control or which by due diligence may become known to them. This conference shall be in person. If, however, it is impractical to meet in person, the conference may be conducted via telephone.



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(1) Proposed Topics for Discussion.

During the conference, or as soon as practicable thereafter considering the size and complexity of the case, the parties should consider ways in which to ensure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Topics for discussion may include:

- (A) Whether there is likely to be additional discovery material to be provided and if so:
  - (i) The expected timing for the production of that discovery;
  - (ii) The expected timing for the production of reciprocal discovery;
  - (iii) Whether there are issues to be resolved regarding the production of electronically stored information;
- (B) Whether there are likely to be affirmative defenses and the timing of those disclosures;
- (C) Whether the case can be resolved through plea negotiations and the appropriate timing for making and responding to plea offers;
- (D) Whether consideration should be given to proposing a scheduling order to the Court to reflect discovery agreements and to propose dates for various filings different from those already required by the rules, including the following:
  - (i) The filing and responding to pretrial motions (*see CrR 12(c)*), and motions in limine (*see CrR 23.2*);
  - (ii) The exchange of exhibit lists and witness lists; and
  - (iii) The timing of expert disclosure;
- (E) Whether the parties have a different view of the length of trial than originally estimated by the United States;
- (F) Whether the trial date set at arraignment is realistic, and if not what a realistic date might be;
- (G) Whether it would be beneficial to have one or more status conferences in the case, and the schedule for such conferences (*see CrR 17.1(a)*).

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(2) Discovery from the Government.

At or before the discovery conference the attorney for the government shall comply with the government's obligations under Fed. R. Crim. P. 16(a) including, but not limited to, the following:

- (A) Permit defendant's attorney to inspect and copy or photograph any photographs used in any photograph lineup, show up, photo spread, or any other identification proceedings or, if no such photographs can be produced, the government shall notify the defendant's attorney whether any such identification proceeding has taken place and the results thereof;
- (B) Permit defendant's attorney to inspect and copy or photograph any search warrants and supporting affidavits which resulted in the seizure of evidence which is intended for use by the government as evidence in chief at trial or which was obtained from, or belongs to, the defendant;
- (C) Inform the defendant's attorney whether any physical evidence intended to be offered in the government's case-in-chief, the admissibility of which the defendant may have standing to challenge, was seized by the government pursuant to any exception to the warrant requirement;
- (D) Advise whether the defendant was a subject of any electronic eavesdrop, wire tap, or any other interception of wire or oral communications as defined by 18 U.S.C. § 2510, et seq., during the course of the investigation of the case;
- (E) Advise the attorney for the defendant and provide, if requested, evidence favorable to the defendant and material to the defendant's guilt or punishment to which he is entitled pursuant to Brady v. Maryland and its progeny; and
- (F) Advise the attorney for the defendant whether or not the government will provide a list of the names and addresses of the witnesses whom it intends to call in its case-in-chief at trial.

The attorney for the government is not required, however, to produce any statements of witnesses which fall within the purview of 18 U.S.C. § 3500 and Fed. R. Crim. P. 26.2, until such time as required under those provisions.

(3) Discovery From Defendant. At or before the discovery conference, in addition to the requirements in Fed. R. Crim. P. 16(b), the defendant's attorney shall advise the attorney for the government whether or not the defendant will provide the names and addresses of the witnesses whom the defense intends to call in its case-in-chief at trial.

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(4) Substantial Expenses Relating to Discovery.

(A) At the discovery conference, counsel shall discuss whether discovery in the case might involve substantial expense, including the expense of storage, distribution, or organization of electronically stored information. Counsel shall discuss whether a discovery coordinator for the case should be appointed.

(B) If counsel for any party believes that the case might involve substantial expense or that a discovery coordinator for the case should be appointed, the parties shall submit to the court, within seven days after the discovery conference, a joint status report reciting the parties' respective views on these issues.

(C) If, after the discovery conference, counsel for any party believes that circumstances have changed, counsel shall confer and the parties shall, if appropriate, file a joint status report reciting the parties' respective views. See CrR 17.1(a).

**(b) Declination of Disclosure**

If, in the judgment of the attorney for the government or of the defendant's attorney, it would not be in the interest of justice to make any one or more of the disclosures set forth in the subsections of this rule, disclosure may be declined. A declination of any requested disclosure shall be in writing, directed to opposing counsel. In the event either the attorney for the government or attorney for the defendant declines to provide the names and addresses of witnesses, such a declination shall, in addition, state the particular reasons for the declination. The declination shall be served on opposing counsel and a copy filed with the court at least seven days before the pretrial motions deadline.

**(c) Statements of Witnesses**

Statements of witnesses, including material covered by Fed. R. Crim. P. 26.2, 18 U.S.C. § 3500, and Fed. R. Crim. P. 6, are to be exchanged:

(1) During the time of trial as provided by Fed. R. Crim. P. 26.2, and 18 U.S.C. § 3500; or

(2) At any time if the parties agree; and

(3) Production of statements of witnesses at a hearing on a motion to suppress evidence will be governed by Fed. R. Crim. P. 12(h).

**(d) Exchange of Exhibit Lists**

At least fourteen days before trial, the parties shall exchange a list of exhibits which they intend to introduce during the presentation of their respective cases-in-chief.

**(e) Further Discovery or Inspection**

If discovery or inspection beyond that provided for above is sought by either counsel, the attorney for the government and the defendant's attorney shall confer with a view toward satisfying these requests in a cooperative atmosphere without recourse to the court. The request for further discovery may be oral or written and the response shall be a like manner. Only in the event that either party's request for any discovery or inspection cannot be satisfied without recourse to the court may either party move for additional discovery or inspection.

Any motion for further discovery or inspection shall be filed in compliance with these Local Criminal Rules.

**(f) Certification of Compliance With This Rule**

All motions for discovery or inspection shall contain a certification that counsel have engaged in a discovery conference and discussed the subject matter of each motion and have been unable to reach agreement of the resolution of the issues. The certification for the motion shall set forth: (1) The statement that the prescribed conference was held; (2) the date of the conference; (3) the names of the parties who attended the conference; and (4) the matters which are in dispute and which require the determination of the court.

The filing of any such motion for further discovery or inspection which does not include the required certification may result in summary denial of the motion or other sanctions in the discretion of the court.

**(g) Modification of Time Periods**

All time periods set forth in this rule may be modified by written agreement by the defendant's attorney and the attorney for the government or by order of the court.

**(h) Other Pretrial Motions**

Except for discovery motions covered by this order, all other pretrial motions shall be filed in accordance with the Federal Rules of Criminal Procedure and the Local Rules W.D. Wash. which are in effect at the time the pretrial motions are filed.

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\*\* See Electronic Discovery and Technology Requirements for Criminal Cases, adopted January 2017, available at <http://www/wawd.uscourts.gov>.

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**CrR 55  
RECORDS**

\* \* \*

**(c) Motions to Seal**

If a party wishes to file under seal materials other than those enumerated in CrR 55(b), a motion or stipulated motion to seal must be made or filed before or at the same time the party files the sealed materials. The party filing the sealed materials shall comply with the requirements of LCR 5(g) unless ordered otherwise.

**(c) Motions to Seal**

If a party wishes to file under seal materials other than those enumerated in CrR 55(b), a motion or stipulated motion to seal must be made or filed before or at the same time the party files the sealed materials. [The motion should set forth a specific statement of the applicable legal standard and the reasons for keeping a document under seal, with evidentiary support from declarations when necessary.](#) The party filing the sealed materials shall comply with the requirements of LCR 5(g)(2) and (6) unless ordered otherwise. [Parties may file a motion or stipulated motion requesting that the court unseal a document.](#)