

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

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**STANDING ORDER REGARDING** )  
**DISCOVERY IN CRIMINAL CASES** ) Administrative Order No. 20-RL-066  
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The Judges unanimously approved the terms of this Order at their regular meeting on September 11, 2020. Unless otherwise ordered in a particular case, the parties in all criminal proceedings in this Court must comply with the following requirements:

- A. Pursuant to Federal Rule of Criminal Procedure 16.1(a), counsel for the government and for the defendant shall, within fourteen days from the date of arraignment of the defendant, confer regarding a timetable and procedures for discovery and trial preparation. This consultation shall address the most efficient and effective methods for the production of discovery and the facilitation of trial preparation. Consideration should be given to the following:
1. The number of defendants in the case.
  2. The complexity of the legal or factual issues in the case.
  3. The amount of electronically stored information (ESI) in the case or other voluminous discovery.
  4. Other unique issues or special needs that may arise in the case.
- B. Requests under Rule 16.1(b) for a discovery conference with the Court must be made to the magistrate judge who handled the arraignment. Counsel for the government and the defendant are encouraged to notify the Court as soon as practical of any request for a discovery conference with the Court.
- C. Upon request of the defendant, to be made within seven days from the date of arraignment of the defendant, the government shall permit the defendant to inspect and copy the following items or copies thereof, or supply copies thereof, which are within the possession, custody, or control of the government, or the existence of which is known or by the exercise of due diligence may become known to the attorney for the government.
1. Any relevant written or recorded statement made by the defendant including, but not limited to, the rough notes of any interrogations of the defendant before or after arrest by any persons then known to be government agents.

2. The defendant's arrest and conviction record.
  3. Results or reports of physical or mental examinations, and of scientific tests, including, without limitation, any handwriting analysis or experiment, which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.
  4. The substance of any oral statement made by the defendant, before or after his/her arrest, in response to interrogation by a person then known to be a government agent that the government intends to offer in evidence at trial.
  5. Recorded grand jury testimony of the defendant relating to the offenses charged.
  6. Books, papers, documents, photographs, tangible objects, buildings, or places that the government intends to use as evidence at trial to prove its case in chief, or were obtained from or belong to each defendant.
- D. Upon receipt by a defendant of materials in C(3) or C(6) from the government, the defendant shall permit the government to inspect and copy the following items or copies thereof, or supply copies thereof, which are within the possession, custody or control of the defendant, the existence of which is known or by the exercise of due diligence may become known to the defendant:
1. Books, papers, documents, photographs, or tangible objects that the defendant intends to introduce as evidence in chief at trial.
  2. Results or reports of physical or mental examinations and of scientific tests or experiments that the defendant intends to introduce as evidence in chief at trial, or which were prepared by a defense witness who will testify concerning the contents thereof.
- E. If a defendant intends to rely upon 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/she had the mental state required for the offense charged, he/she shall give written notice thereof to the government. This notice shall be given within twenty-one days from the date of arraignment of the defendant.
- F. The government shall reveal to the defendant and permit inspection and copying all information and material known to the government that may be favorable to the defendant on the issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Agurs*, 427 U.S. 97 (1976), or that relates to the potential impeachment of a government witness within the scope of *Giglio v. United States*, 405 U.S. 150 (1972).

- G. The government shall obtain and copy *Brady/Giglio* information, including any prior criminal record of any witness who will testify for the government at trial, so that the information is available for effective use at the time of trial. This Court cannot compel the government to disclose Jencks Act statements prior to trial. *United States v. Presser*, 844 F.2d 1275, 1283 (6th Cir. 1988). The Sixth Circuit Court of Appeals has noted, however, that “the better practice . . . is for the government to produce such material well in advance of trial so that defense counsel may have an adequate opportunity to examine that which is not in dispute and the court may examine the rest in camera, usually in chambers.” *United States v. Minsky*, 963 F.2d 870, 876 (6th Cir. 1992). This Court urges the government to follow the recommendation of the Sixth Circuit to produce Jencks Act and other impeachment material in a timely fashion. The parties must also be prepared to comply with the provisions of Rule 26.2 at trial.
- H. The government shall state whether the defendant was identified in any lineup, showup, photo spread or similar identification proceeding, and produce any picture utilized or resulting therefrom.
- I. The government shall advise its agents and officers involved in this case to preserve all rough notes.
- J. The government shall advise the defendant, pursuant to Federal Rule of Criminal Procedure 12(b)(4), of its intention to introduce during its case in chief evidence under Federal Rule of Evidence 404(b).
- K. The government shall state whether the defendant was an aggrieved person, as defined in 18 U.S.C. § 2510(11), of any electronic surveillance conducted in connection with the investigation of the charges pending herein, and, if so, produce the relevant Applications and Court Orders upon entry of an appropriate protective order.
- L. Upon request of the defendant, to be made within seven days from the date of arraignment of the defendant or receipt by the government, whichever is later, the government shall produce to the defense, for independent expert examination, copies of all latent fingerprints or palm prints which have been identified by a government expert as those of the defendant.
- M. The parties shall make every possible effort in good faith to stipulate all facts or points of law, the truth and existence of which is not contested and the early resolution of which will expedite the trial. Pursuant to Federal Rule of Criminal Procedure 17.1, no stipulation made by defense counsel at the conference shall be used against the defendant unless the stipulation is reduced to writing, signed by the defendant and his/her counsel, and filed with the court.

- N. It shall be the continuing duty of counsel for both sides to immediately reveal to opposing counsel all newly discovered information or other material within the scope of this order.
- O. Upon a sufficient showing, the Court may at any time, upon motion properly filed, order that the discovery or inspection provided for by this order be denied, restricted, or deferred, or make such other order as is appropriate. It is expected by the Court, however, that counsel for both sides shall make every good faith effort to comply with the letter and spirit of this order.
- P. This order is designed to exhaust the discovery to which a defendant is ordinarily entitled and to avoid the necessity of counsel for the defendant filing routine motions for discovery. Accordingly, counsel for the defendant shall not file a motion to compel discovery unless counsel has made a specific request of the government for each item of discovery sought and the request has been declined. Further, any motion filed on behalf of the defendant shall include a separate accompanying certification by counsel for the defendant that either:
1. The item of discovery sought in the motion is not included in or covered by this discovery order; that a formal request for the item has been made to the government, and the government declined the request, or
  2. The item of discovery sought in the motion is included in or covered by this discovery order; that a formal request for the item has been made to the government, and the government has declined the request.

Unless otherwise indicated above, the parties must comply with this order within twenty-one days of the arraignment. Failure to abide by this order may result in the imposition of sanctions.

FOR THE COURT:



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ROBERT J. JONKER  
CHIEF UNITED STATES DISTRICT JUDGE

Dated: September 22, 2020