

Rule 415. Regulation of Discovery

(a) Investigations Not to be Impeded. Except as is otherwise provided as to matters not subject to disclosure and protective orders, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information (except the accused) to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(b) Continuing Duty to Disclose. If, subsequent to compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, he or she shall promptly notify the other party or his or her counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(c) Custody of Materials. Any materials furnished to an attorney pursuant to these rules shall remain in his or her exclusive custody unless the court authorizes dissemination pursuant to this rule, shall be used only for the purposes of conducting his or her side of the case, and shall be subject to such other terms and conditions as the court may provide. Upon motion of the attorney, the court shall, within 5 court days, enter an order allowing the attorney to provide a copy of the discovery to the defendant unless good cause is shown why the discovery should not be furnished to the defendant. Absent the court order allowing otherwise, materials furnished to a defendant by a defense attorney pursuant to these rules shall not contain any contact information for the witnesses, mental health counselors or victim's advocates, or other personal identifiers of such witnesses such as addresses; dates of birth; phone numbers; Social Security numbers; financial institution information; driver's license and state identification numbers; checking, credit, or debit card information; e-mail address or other social media contacts; or medical or mental health records and shall not contain photographs or videos of victims of sexual assault, sexual abuse, or child pornography.

(d) Protective Orders. If, when furnishing any material to an attorney or a defendant pursuant to these rules, the party furnishing the materials files for a protective order to restrict or defer further disclosures, the attorney or defendant shall not furnish to anyone the materials identified in the motion until the motion for a protective order is ruled upon by the court. Upon a showing of cause, the court may at any time order that specified disclosures or redisclosures be restricted, conditioned upon compliance with protective measures or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled is disclosed in sufficient time to permit counsel or the defendant to make beneficial use of the disclosure.

(e) Excision. When some parts of certain material are discoverable under these rules, and other parts not discoverable, as much of the material should be disclosed as is consistent with the rules. Excision of certain material and disclosure of the balance is preferable to withholding the whole. Material excised pursuant to judicial order shall be sealed, impounded and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal.

(f) In Camera Proceedings. Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or portion of such showing, to be made *in camera*. A record shall be made of such proceedings. If the court enters an order granting relief following

a showing *in camera*, the entire record of such showing shall be sealed, impounded, and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal.

(g) Sanctions.

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, exclude such evidence, or enter such other order as it deems just under the circumstances.

(ii) Wilful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel or the defendant to contempt of court or other appropriate sanctions by the court.

Effective October 1, 1971; amended Oct. 23, 2020, eff. immediately.

Committee Comments
(Revised Oct. 23, 2020)

Paragraph (a). One barrier to pretrial investigation and meaningful discovery procedures is the practice of some attorneys of advising witnesses not to cooperate with opposing counsel. This paragraph is included to provide that discovery shall not be frustrated by improper conduct of counsel or the various agents of counsel.

Paragraph (b) is modeled after Federal Rule of Criminal Procedure 16(c). This paragraph is intended to permit thorough preparation and to minimize paperwork and delay. After discovery has been conducted as provided, any additional material or information acquired by either side which is subject to disclosure should be automatically and promptly disclosed. The notification required by this paragraph is intended to make such disclosures as simple and easy as possible.

Paragraph (c). This paragraph recognizes that most discovery in the overwhelming majority of cases has little to no information that is of any interest to anyone except the parties and their counsel. Likewise, the paragraph recognizes the compelling need that may arise for defense counsel to share discovery in whole or in part with their client for their client to review without supervision of counsel. The choice of how to review discovery with a client is one best left to the professional and ethical decision of counsel. Upon a motion by defendant's attorney the court shall allow the furnishing of discovery to the defendant unless the State objects, at which time the court shall weigh the benefit to the defense against any potential harm or danger raised by the prosecution and enter an appropriate order. This facilitates more effective and efficient representation of defendant by allowing the exchange of discovery between a defendant and the defendant's attorney. At the same time, in order that needs of exceptional cases be recognized, the rule provides that the disclosing party may seek a protective order to fit specific circumstances of cases. After objection by the State and before granting a blanket prohibition on furnishing discovery to a client, the court shall consider how an order granting limited disclosure of discovery can be accomplished. It should be noted that this paragraph also applies to the State. Nothing in

this paragraph should be interpreted to prevent counsel from having tests performed by experts on materials furnished by opposing counsel or from having experts examine reports received from opposing counsel. Tangible objects, such as guns, knives, clothing, not subject to duplication but furnished for purposes of testing, *etc.*, should be returned to the furnishing party when such testing or inspection is completed. If not returned routinely the last phrase permits the court to so order, in addition to any other terms and conditions provided.

Paragraph (d). In order that legitimate needs of exceptional cases will not shape discovery policy and result in denial of discovery in all cases, this paragraph is designed to provide sufficient flexibility to meet such exceptional needs. This paragraph, adapted from Federal Rule of Criminal Procedure 16(e), permits application by the party concerned to the court for a protective order adjusting the time, place, recipient, or use of the disclosures as are necessary in a particular case. It is anticipated that it will ordinarily be needed with respect to those matters for which discovery is mandatory, rather than matters where the court has discretion in allowing discovery under Rule 412(h). While the protective order is designed to permit flexibility, it is to be used under a policy of as full and as early discovery as possible; it is not intended to permit denial of disclosure, although it may result in deferral until a later time. The disclosure must be made in time for a party to make beneficial use of it. Normal use of the protective order will be made when there is substantial risk to any person of physical harm, intimidation, bribery, or economic reprisals which outweigh any usefulness of disclosure to the defendant or State. This rule also establishes safeguards to prevent the expeditious redisclosure of discovery by an attorney to a defendant prior to entry of a protective order. Once a protective order is sought by motions, redistribution of the materials is automatically restricted until the court rules on the motion for a protective order. At that hearing the court could weigh the need and efficiency of disclosure against legitimate concerns in cases such as those involving sexual assault or domestic violence that victims and witnesses feel safe and not be subject to harassment or embarrassment.

Paragraph (e). Occasions will arise when material will contain information which is both discoverable and nondiscoverable. This paragraph recognizes the right of a party to excise, or have excised, the nondiscoverable portion. The procedure under this paragraph is different from that under the Jencks Act, 18 U.S.C. §3500(c), and under present Illinois practice, only in giving approval to a party excising portions of material without court supervision. Approval of counsel's independent conduct is consistent with the purpose of expediting the discovery process, but it is expected that in many cases counsel will seek a decision by the court, and that, in any event, he will be held accountable for excisions, if they are challenged by opposing counsel. The only change from the ABA standards is the requirement that the material excised pursuant to a judicial order not only be sealed, but also impounded and preserved.

Paragraph (f) provides for preserving the confidentiality of material at such times as the trial court is called upon to decide whether to require its disclosure. In issuing protective orders under paragraph (d), allowing excision of portions of material under paragraph (e), or in otherwise deciding that certain material is not subject to disclosure, the trial court must have an opportunity to examine, in private, the particular material as well as the reasons for nondisclosure. The purpose of issuing such rulings would often be defeated if the hearing were to be held in open court. To

protect the litigants from error by the trial court, provision is made for the making and preserving of a record of all such proceedings for purposes of appeal.

Through paragraph (g), the committee intended to emphasize that these discovery rules must be enforced. Rather than attempt to provide specific sanctions for specific violations, the committee deemed it wise to leave the sanctions to the discretion of the trial court. This paragraph does contain one provision not present in the ABA standards. If justified under the circumstances, the court may exclude evidence which a party has failed to disclose under applicable discovery rules. The committee felt that such a device is a useful sanction, and that even though some problems may arise in applying it against the accused, the sanction can be applied in some situations. In this regard this paragraph conforms to Federal Rule of Criminal Procedure 16(g), and further guarantees the expedition of the discovery process. The sanctions listed are not exclusive.