

LCrR 16.2 LIMITATIONS CONCERNING CRIMINAL DISCOVERY

The practice in this District between the United States and defense counsel is “open file.” In that the Court, pursuant to Federal Rule of Criminal Procedure 16(d)(1), may for good cause restrict discovery, the following limitations on “open file” discovery are hereby established:

1. Any discovery materials (defined as all information contained within discovery, regardless of whether such materials are defined as discovery under Rule 16) that are provided by the United States to the defendant shall not be further disseminated by the defendant or his or her counsel to any individuals, organizations, or other entities, except to the following degree:
 - a. To members of the defense team (the defendant, counsel, paralegals, investigators, litigation support personnel, and legal support staff);
 - b. To any experts or consultants retained to assist in the preparation of the defense; and
 - c. To the Court.

Upon dissemination of discovery materials to any of the parties identified above, except the Court, defense counsel shall inform the recipient of the confidentiality requirements imposed by this local rule.

2. Discovery materials are to be used by the defendant and his or her counsel solely for the purpose of allowing the defendant to prepare the defense. The defendant, his or her counsel, and other members of the defense team shall not disseminate, disclose, or provide such discovery materials to anyone who is not necessary to the preparation of the defense. In the event the defense team desires to disseminate, disclose or provide such discovery materials to a party not permitted by this local rule, the United States must first be so advised and the parties must seek to reach an agreement on the matter. If an agreement cannot be reached, defense counsel shall apply to the Court for relief.
3. The defense team may display copies of discovery materials to non-expert witnesses if it is determined that such is necessary for the purpose of preparing the defense, and the defense team may do so without notice to the United States. However, the defense team may display copies of discovery materials to such witnesses only in the presence of the defense team and only if such witnesses agree to the confidentiality requirements set out in this rule. Further, witnesses shall not be permitted to maintain copies of discovery materials after inspection.

4. The defendant shall not be given copies of any “sensitive materials.” “Sensitive materials” are defined as discovery containing HIPPA information, dates of birth, home addresses, Social Security numbers, financial information, and wiretapped phone calls. “Sensitive materials” shall be reviewed with the defendant in the presence of the defense team and the defense team shall maintain custody and control of such materials. Likewise, the defendant shall not be given copies of *Jencks* material, to include reports of interviews, transcripts of Grand Jury testimony, and recorded or written statements or reports of statements taken by law enforcement officers of potential witnesses. The defendant may, however, have unfettered access to any “sensitive materials” which contain only his personal information, and any other materials which contain only the defendant’s own statements.

5. At the conclusion of any case involving criminal discovery, and after the time for all direct appeals and post-conviction motions have been exhausted, defense counsel shall return all copies of discovery materials to the United States or, in the alternative, certify that all discovery materials have been destroyed. **In cases involving digitally downloaded discovery files, in lieu of physical destruction defense counsel may certify that such files have been deleted from any server, PC, hard drive, or other electronic storage device to which they have been downloaded and that those files have been emptied from the device’s recycle bin. Provided further, defense counsel shall be permitted to maintain a file copy in their case file which shall continue to be subject to this Rule.**

6. The local rule solely governs the defendant’s and the defense team’s use of documents produced from the United States. This rule affects in no way the defendant’s and the defense team’s use of documents that they already possess prior to receiving discovery or might obtain through other means.