

October 13, 2015

TO: Supreme Court Criminal Rules Committee

FROM: Rule 16 Sub-Committee

RE: Changes to Rule 16 relating to Electronic Discovery

The Subcommittee proposes the following amendment be adopted by the Committee. This proposal changes the rule so that costs and location are dealt with in separate paragraphs. We think this clears up some of the confusing language that was identified at our last meeting. We have also drafted it in a fashion so as to eliminate the need for comments since there is no reference to the statute in the rule. Also, you should know that we have consulted with Tom Raynes of the DA Council. There was some discussion that changes to the statute might be proposed this session because of cost concerns. Tom has confirmed that all the players are now agreeing to give it a year and see how it plays out. Accordingly, we need the rule in place to allow that to happen. Tom did mention that there may be a request to push back the effective date and our transmittal letter would suggest the Court approve the rule with a fluid effective date that would coincide with the statute's date.

Rule 16 (V) (c) Cost and Location of Discovery.

(1) THE COSTS OF THE PROSECUTION PROVIDING ANY DISCOVERABLE MATERIAL TO THE DEFENSE, ELECTRONICALLY OR OTHERWISE, SHALL BE PAID FROM FUNDS ALLOCATED BY THE LEGISLATURE. THE DISTRICT ATTORNEY SHALL NOT SEEK REIMBURSEMENT FOR DISCOVERY COSTS FROM ANY OTHER SOURCE. (SOURCE= NEW STATUTE). FOR ANY MATERIALS PROVIDED TO THE PROSECUTION AS PART OF THE DEFENSE RECIPROCAL DISCOVERY OBLIGATION, THE COST SHALL BE BORNE BY THE PROSECUTION BASED ON THE ACTUAL COST OF DUPLICATION. (SOURCE = EXISTING RULE). COPIES OF ANY DISCOVERY PROVIDED TO A DEFENDANT BY COURT APPOINTED COUNSEL SHALL BE PAID FOR BY THE DEFENDANT. (SOURCE = EXISTING RULE)

(2) THE PLACE OF DISCOVERY FOR MATERIALS NOT CAPABLE OF BEING PROVIDED IN ELECTRONIC FORMAT SHALL BE AT THE OFFICE OF THE PARTY OR AGENCY FURNISHING IT, OR AT A MUTUALLY AGREEABLE LOCATION. (ADDS POSSIBILITY OF DISCOVERY THAT CAN'T BE SCANNED OR COPIED ELECTRONICALLY TO LANGUAGE OF EXISTING STATUTE – THIS LETS SYSTEM FIGURE OUT ON ITS OWN HOW TO DELIVER THE ELECTRONIC DISCOVERY.)

Steve Jacobson
Judge Dana Nichol
Dave Vandenberg