

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1717

Amending Criminal Rule 16(d)(3)
concerning custody of discovery
materials.

IT IS ORDERED:

Criminal Rule 16 is amended to read as follows:

Rule 16. Discovery.

* * * *

(d) Regulation of Discovery.

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(3) Materials to Remain in ~~Exclusive~~ Custody of Attorney.

(A) Materials furnished to an attorney pursuant to these rules ~~shall remain in the attorney's exclusive custody,~~ shall be used only for the purpose of conducting the case. The following materials must remain in the custody of the defense attorney, the attorney's staff, investigators, experts, and others as necessary for the preparation of the defendant's case, and shall be subject to other terms and conditions that the court may provide. The materials listed in this paragraph shall not be provided to the defendant, but the information in the materials may be shared with the defendant to the extent necessary to prepare the defense of the case; ~~and shall be subject to other terms and conditions that the court may provide if the information is~~

(i) a criminal history record of a victim or witness;

(ii) a medical, psychiatric, psychological, or counseling record of a victim or witness;

(iii) an adoption record;

(iv) a record that is confidential under AS 47.12.300 or a similar law in another jurisdiction;

(v) a report of presentence investigation of a victim or witness prepared pursuant to Criminal Rule ~~32~~32.1 or a similar law in another jurisdiction;

(vi) a record of the Department of Corrections other than the defendant's own file and any other an-incident report relating to the crime with which the defendant is charged; ~~or and~~

(vii) any other record that the court orders be kept in the exclusive custody of the attorney.

(B) An attorney shall not disclose to a defendant the residence or business address or telephone number of a victim or witness, obtained from information provided under this rule, even if the defendant is acting as co-counsel. If the address and telephone numbers of all victims and witnesses have been obliterated, materials that had contained the address or telephone number of a victim or witness may be provided to a defendant proceeding without counsel only as allowed by AS 12.61.120.

(C) Notwithstanding a defendant's status as co-counsel, materials covered by subsection (d)(3)(A) shall remain in the ~~exclusive~~ custody of the defendant's attorney, the attorney's staff, investigators, experts, and others as necessary for the preparation of the defendant's case, and shall be subject to other terms and conditions that the court may provide.

(D) If a defendant is proceeding without counsel, materials covered by subsection (d)(3)(A) may be provided to the defendant. If materials are provided to an unrepresented defendant under this paragraph, the court shall order that the materials remain in the defendant's exclusive custody, be used only for purposes of conducting the case, and be subject to other terms, conditions, and restrictions that the court may provide. Upon a showing of good cause, the court may impose specific terms, conditions, or restrictions concerning inspection of the materials by other persons involved in the preparation of the case, such as staff, investigators, experts, witnesses, or others. The court shall also inform the defendant and such other persons involved in the preparation of the case that violation of an order issued under this paragraph is punishable as a contempt of court.

DATED: November 10, 2010

EFFECTIVE DATE: April 15, 2011

/s/
Chief Justice Carpeneti

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Christen

/s/
Justice Stowers