

SENATE BILL NO. 10

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS LEMAN, Kelly, Halford, Green

Introduced: 1/16/95

Referred: JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act revising Rule 16, Alaska Rules of Criminal Procedure, relating to
2 discovery and inspection in criminal proceedings, to adopt the comparable federal
3 rule."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** Rule 16, Alaska Rules of Criminal Procedure, is repealed and reenacted to
6 read:

7 Rule 16. DISCOVERY AND INSPECTION. (a) Government Disclosure of
8 Evidence.

9 (1) Information Subject to Disclosure.

10 (A) Statement of Defendant. On request of a defendant, the
11 prosecution shall disclose to the defendant and make available for inspection,
12 copying, or photographing: any relevant written or recorded statements made
13 by the defendant, or copies of the statements, within the possession, custody,
14 or control of the prosecution, the existence of which is known, or by the

1 exercise of due diligence may become known, to the prosecuting attorney; that
2 portion of any written record containing the substance of any relevant oral
3 statement made by the defendant, whether before or after arrest, in response to
4 interrogation by any person then known to the defendant to be an agent of the
5 prosecution; and recorded testimony of the defendant before a grand jury that
6 relates to the offense charged. The prosecution shall also disclose to the
7 defendant the substance of any other relevant oral statement made by the
8 defendant, whether before or after arrest, in response to interrogation by any
9 person then known by the defendant to be an agent of the prosecution if the
10 prosecution intends to use that statement at trial. If the defendant is a
11 corporation, partnership, association, or labor union, the court may grant the
12 defendant, on its motion, discovery of relevant recorded testimony of any
13 witness before a grand jury who was

14 (i) at the time of that testimony, so situated as an officer
15 or employee as to have been able legally to bind the defendant in
16 respect to conduct constituting the offense; or

17 (ii) at the time of the offense, personally involved in the
18 alleged conduct constituting the offense and so situated as an officer or
19 employee as to have been able legally to bind the defendant in respect
20 to that alleged conduct in which the witness was involved.

21 (B) Defendant's Prior Record. On request of the defendant, the
22 prosecution shall furnish to the defendant a copy of the defendant's prior
23 criminal record, if any, in the possession, custody, or control of the
24 prosecution, the existence of which is known, or by the exercise of due
25 diligence may become known, to the prosecuting attorney.

26 (C) Documents and Tangible Objects. On request of the
27 defendant, the prosecution shall permit the defendant to inspect and copy or
28 photograph books, papers, documents, photographs, tangible objects, buildings,
29 or places, or copies or portions of them that are in the possession, custody, or
30 control of the prosecution, and that are material to the preparation of the
31 defendant's defense, or are intended for use by the prosecution as evidence in

1 chief at the trial, or were obtained from or belong to the defendant.

2 (D) Reports of Examinations and Tests. On request of a
3 defendant, the prosecution shall permit the defendant to inspect and copy or
4 photograph results or reports of physical or mental examinations, and of
5 scientific tests or experiments, or copies of them that are in the possession,
6 custody, or control of the prosecution, the existence of which is known, or by
7 the exercise of due diligence may become known, to the prosecuting attorney,
8 and that are material to the preparation of the defense or are intended for use
9 by the prosecution as evidence in chief at the trial.

10 (E) Expert Witnesses. At the defendant's request, the
11 prosecution shall disclose to the defendant a written summary of testimony the
12 prosecution intends to use under Rules 702, 703, or 705 of the Alaska Rules
13 of Evidence during its case in chief at trial. This summary must describe the
14 witnesses' opinions, the bases and the reasons for them, and the witnesses'
15 qualifications.

16 (2) Information Not Subject to Disclosure. Except as provided in
17 (1)(A), (B), (D), and (E) of this subsection, this rule does not authorize

18 (A) the discovery or inspection of reports, memoranda, or other
19 internal government documents made by the prosecuting attorney or other
20 government agents in connection with the investigation or prosecution of the
21 case; or

22 (B) the discovery or inspection of statements made by
23 prosecution witnesses or prospective prosecution witnesses unless the discovery
24 or inspection of statements by those witnesses and prospective witnesses is
25 otherwise explicitly authorized by law.

26 (3) Information in Grand Jury Transcripts. Except as provided in Rule
27 6 of the Alaska Rules of Criminal Procedure and (a)(1)(A) of this rule, this rule does
28 not authorize discovery or inspection of the recorded proceedings of a grand jury.

29 (b) Disclosure of Evidence by the Defendant.

30 (1) Information Subject to Disclosure.

31 (A) Documents and Tangible Objects. If the defendant requests

1 disclosure under (a)(1)(C) or (D) of this rule, when the prosecution complies
2 with that request, the defendant, on request of the prosecution, shall permit the
3 prosecution to inspect and copy or photograph books, papers, documents,
4 photographs, tangible objects, or copies or portions of them that are in the
5 possession, custody, or control of the defendant and that the defendant intends
6 to introduce as evidence in chief at the trial.

7 (B) Reports of Examinations and Tests. If the defendant
8 requests disclosure under (a)(1)(C) or (D) of this rule, when the prosecution
9 complies with that request, the defendant, on request of the prosecution, shall
10 permit the prosecution to inspect and copy or photograph any results or reports
11 of physical or mental examinations and of scientific tests or experiments made
12 in connection with the particular case, or copies of them in the possession or
13 control of the defendant, that the defendant intends to introduce as evidence in
14 chief at the trial or that were prepared by a witness whom the defendant
15 intends to call at the trial when the results or reports relate to that witness'
16 testimony.

17 (C) Expert Witnesses. If the defendant requests disclosure
18 under (a)(1)(E) of this rule and the prosecution complies, the defendant, at the
19 prosecution's request, must disclose to the prosecution a written summary of
20 testimony the defendant intends to use under Rules 702, 703, and 705 of the
21 Alaska Rules of Evidence as evidence at trial. This summary must describe the
22 opinions of the witnesses, the bases and reasons for them, and the witnesses'
23 qualifications.

24 (2) Information Not Subject to Disclosure. Except as to scientific or
25 medical reports, this subsection does not authorize the discovery or inspection of
26 reports, memoranda, or other internal defense documents made by the defendant, or
27 the defendant's attorneys or agents, in connection with the investigation or defense of
28 the case, or statements made by the defendant, or by prosecution or defense witnesses,
29 or by prospective prosecution or defense witnesses, to the defendant, the defendant's
30 agents, or attorneys.

31 (c) Continuing Duty to Disclose. If, before or during trial, a party discovers

1 additional evidence or material previously requested or ordered that is subject to
2 discovery or inspection under this rule, the party shall promptly notify the other party,
3 that other party's attorney, or the court of the existence of the additional evidence or
4 material.

5 (d) Regulation of Discovery.

6 (1) Protective and Modifying Orders. Upon a sufficient showing, the
7 court may at any time order that the discovery or inspection be denied, restricted, or
8 deferred, or make any other order as is appropriate. Upon motion by a party, the court
9 may permit the party to make the showing, in whole or in part, in the form of a
10 written statement to be inspected by the judge alone. If the court enters an order
11 granting relief following an ex parte showing, the entire text of the party's statement
12 shall be sealed and preserved in the records of the court to be made available to the
13 appellate court in the event of an appeal.

14 (2) Failure to Comply With a Request. If at any time during the course
15 of the proceeding it is brought to the attention of the court that a party has failed to
16 comply with this rule, the court may order the party to permit the discovery or
17 inspection, grant a continuance, or prohibit the party from introducing evidence not
18 disclosed, or it may enter an order it deems just under the circumstances. The court
19 may specify the time, place, and manner of making the discovery and inspection and
20 may prescribe any terms and conditions as are just.