



IN THE SUPREME COURT OF IOWA

IN THE MATTER OF IOWA RULE
OF CRIMINAL PROCEDURE
2.11(12)

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SUPERVISORY ORDER

Pursuant to this court's supervisory and administrative authority under Iowa Code section 602.1201 (2009), Iowa Rule of Criminal Procedure 2.11(12) is temporarily amended, effective immediately. This amendment will become permanent on December 28th, 2009.

Dated this 28th day of October, 2009.

THE SUPREME COURT OF IOWA

By Marsha Ternus
Marsha K. Ternus, Chief Justice

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF IOWA RULE
OF CRIMINAL PROCEDURE
2.11(12)

REPORT OF THE
SUPREME COURT

TO: THE HONORABLE KEITH A. KREIMAN, CHAIR OF THE SENATE JUDICIARY COMMITTEE OF THE 2009 REGULAR SESSION OF THE EIGHTY-THIRD GENERAL ASSEMBLY OF THE STATE OF IOWA.

Pursuant to Iowa Code sections 602.4201 and 602.4202 (2009), the Supreme Court of Iowa has approved and reports on this date to the Chair of the Senate Judiciary Committee the adoption of Iowa Rule of Criminal Procedure 2.11(12). This amendment shall take effect December 28th, 2009.

Dated this 28th day of October, 2009.

Respectfully submitted,

THE SUPREME COURT OF IOWA

By Marsha Ternus
Marsha Ternus, Chief Justice

ACKNOWLEDGMENT

I, the undersigned, Chair of the Senate Judiciary Committee, hereby acknowledge delivery to me on the ___ day of _____, the Report of the Supreme Court pertaining to Iowa Rule of Criminal Procedure 2.11(12).

Chair of the Senate Judiciary Committee

Please retain the copy and sign and return the original to: The Iowa Supreme Court Clerk's Office, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, IA 50319.

1 **2.11(12) State's duty to disclose witnesses.**
2

3 a. *Duty to disclose addresses of law enforcement, governmental, and licensed*
4 *professional witnesses.* ~~Within five days after the defendant's arraignment~~In
5 the minutes of testimony, the state shall provide the defense with a written list
6 of the known employment addresses of the following persons who are ~~known to~~
7 ~~the prosecuting attorney and~~ are expected to testify in their official or
8 professional capacity during the state's case in chief: sworn peace officers;
9 federal, state, local and municipal employees and elected officials; and licensed
10 professionals. If the state contends disclosure of an address would result in
11 substantial risk to any person of physical harm, intimidation, bribery,
12 economic reprisal, coercion, or undue invasion of privacy, the state may
13 withhold disclosure and shall inform the defense of the basis of such
14 nondisclosure, within the time period required in this paragraph.
15

16 b. *Duty to disclose addresses of other witnesses.* ~~Within five days after the~~
17 ~~defendant's arraignment~~In the minutes of testimony, the state shall provide the
18 ~~defensedant's attorney~~ with a written list of the known residential and
19 employment addresses of the other witnesses, who are ~~known to the~~
20 ~~prosecuting attorney and~~ are expected to testify during the state's case in chief.
21 If the state contends disclosure of an address would result in substantial risk
22 to any person of physical harm, intimidation, bribery, economic reprisal,
23 coercion, or undue invasion of privacy, the state may withhold disclosure and
24 shall inform the defendant's attorney of the basis of such nondisclosure, ~~within~~
25 ~~the time period required in this paragraph.~~
26

27 c. *Disclosure when the defendant is represented by an attorney of address*
28 *withheld by the state.* If the state withholds disclosure of any addresses, or the
29 defendant requests the residential or alternative address of a witness, the
30 defendant or the defendant's attorney may request in writing the disclosure of
31 addresses for investigative purposes or to ensure service of a subpoena. Within
32 five days of receipt of the request, the state shall confer with the defendant or
33 the defendant's attorney and provide such information to the defendant or the
34 defendant's attorney or seek a protective order from the court. The court may
35 deny, defer, or otherwise restrict disclosure to the defendant or the defendant's
36 attorney if the state proves such disclosure would result in substantial risk to
37 any person of physical harm, intimidation, bribery, economic reprisal, coercion,
38 or undue invasion of privacy, which outweighs any usefulness of the disclosure
39 to the defendant or the defendant's attorney. In establishing the usefulness of
40 the disclosure to the defendant or the defendant's attorney, the defendant or
41 the defendant's attorney may provide the court with a written statement to be
42 reviewed by the court in camera. Any such written statement shall not be
43 served on the state, but shall be made a part of the file, placed under seal, and
44 not subject to disclosure absent further order of a court. If the court denies
45 the defendant or the defendant's attorney's request, the court shall ~~may enter~~

1 | an order allowing the defendant or the defendant's attorney an opportunity to
2 | meet with any witness who is willing to talk to the defendant in an environment
3 | that provides for the protection of the witness. The court shall also enter an
4 | order facilitating the defendant or the defendant's attorney's ability to serve a
5 | subpoena on the witness for deposition or trial.

6 |
7 | *d. Further disclosure by the defendant or defendant's attorney. Any address
8 | disclosed by the state in the minutes of testimony may be disclosed by the
9 | attorney to the defendant, persons employed by the attorney, persons
10 | appointed by the court to assist in the preparation of a defendant's case, or any
11 | other person if the disclosure is required for preparation of the defendant's
12 | case. Except as provided in this rule, no attorney may disclose or permit to be
13 | disclosed to a defendant, members of the defendant's family, or anyone else the
14 | address of a witness whose name is disclosed to the attorney. An attorney may
15 | disclose or permit to be disclosed the address of a witness to persons employed
16 | by the attorney or to persons appointed by the court to assist in the
17 | preparation of a defendant's case if the disclosure is required for that
18 | preparation. Any other disclosure made by the attorney may only be authorized
19 | by court order after a hearing and a showing of good cause. In support of a
20 | claim of good cause, the defendant's attorney may provide the court with a
21 | written statement to be reviewed by the court in camera. Any such written
22 | statement shall not be served on the state, but shall be made a part of the file,
23 | placed under seal, and not subject to disclosure absent further order of a
24 | court. An attorney shall inform persons provided this information that further
25 | dissemination of the information, except as provided by this paragraph court
26 | order, is prohibited. A willful violation of this rule by the defendant, an
27 | attorney, persons employed by an attorney, persons appointed by the court, or
28 | other persons authorized by the court to receive the address is subject to
29 | punishment by contempt.*

30 |
31 | *e. ~~Disclosure when the defendant is not represented by an attorney.~~ If the*
32 | *defendant is not represented by an attorney, the state has no duty to disclose*
33 | *to the defendant the addresses required under rule 2.11(12)(b). If the defendant*
34 | *requests in writing the disclosure of addresses for investigative purposes or to*
35 | *ensure service of a subpoena, the state within five days of receipt of the request*
36 | *shall confer with the defendant and provide such information to the defendant*
37 | *or seek a protective order from the court. The court may deny, defer, or*
38 | *otherwise restrict disclosure to the defendant if the state proves such*
39 | *disclosure would result in substantial risk to any person of physical harm,*
40 | *intimidation, bribery, economic reprisal, coercion, or undue invasion of privacy,*
41 | *which outweighs any usefulness of the disclosure to the defendant. In*
42 | *establishing the usefulness of the disclosure to the defendant, the defendant*
43 | *may provide the court with a written statement to be reviewed by the court in*
44 | *camera. Any such written statement shall not be served on the state, but shall*
45 | *be made a part of the file, placed under seal, and not subject to disclosure*
46 | *absent further order of a court. If the court denies the defendant's request, the*

1 | ~~court shall enter an order allowing the defendant an opportunity to meet with~~
2 | ~~any witness who is willing to talk to the defendant in an environment that~~
3 | ~~provides for the protection of the witness. The court shall also enter an order~~
4 | ~~facilitating the defendant's ability to serve a subpoena on the witness for~~
5 | ~~deposition or trial.~~

6 |
7 | ~~f. *Further disclosure by the defendant.* Except as provided in this rule, no~~
8 | ~~defendant may disclose or permit to be disclosed to members of the defendant's~~
9 | ~~family or anyone else the address of a witness whose name is disclosed to the~~
10 | ~~defendant. A defendant may disclose or permit to be disclosed the address of a~~
11 | ~~witness to persons employed by the defendant or to persons appointed by the~~
12 | ~~court to assist in the preparation of a defendant's case if the disclosure is~~
13 | ~~required for that preparation. Any other disclosure made by the defendant may~~
14 | ~~only be authorized by court order after a hearing and a showing of good cause.~~
15 | ~~In support of a claim of good cause, the defendant may provide the court with a~~
16 | ~~written statement to be reviewed by the court in camera. Any such written~~
17 | ~~statement shall not be served on the state, but shall be made a part of the file,~~
18 | ~~placed under seal, and not subject to disclosure absent further order of a~~
19 | ~~court. A defendant shall inform persons provided this information that further~~
20 | ~~dissemination of the information, except as provided by this paragraph, is~~
21 | ~~prohibited. A willful violation of this rule by a defendant, persons employed by~~
22 | ~~a defendant, persons appointed by the court, or other persons authorized by~~
23 | ~~the court to receive the address is subject to punishment by contempt.~~

24 |
25 | ~~g. *Continuing duty to update.* The state has a continuing duty to inform the~~
26 | ~~opposing party of any change in the last known residential address or~~
27 | ~~employment address of any witness that the state intends to call during its~~
28 | ~~case in chief as soon as practicable after the state obtains that information.~~

29 |
30 | ~~h. *Interference with witnesses.* The defendant, attorneys representing the~~
31 | ~~defendant or the state, and their representatives and agents shall not instruct~~
32 | ~~or advise persons, except the defendant, having relevant information that he or~~
33 | ~~she should refrain from discussing the case with opposing counsel or an~~
34 | ~~unrepresented defendant or from showing opposing counsel or an~~
35 | ~~unrepresented defendant any relevant evidence. The defendant, attorneys~~
36 | ~~representing the defendant or the state, and their representatives and agents~~
37 | ~~shall not otherwise impede investigation of the case by opposing counsel or an~~
38 | ~~unrepresented defendant. See Iowa Court Rule 32:3.4(a) and (f).~~

39 |
40 | ~~i. *Filing of witnesses' addresses prohibited* Service of subpoenas. No person~~
41 | ~~shall file with the clerk of court any document required under this rule that~~
42 | ~~discloses the addresses of any witness. The most recent address provided by the~~
43 | ~~state for a witness shall be the authorized address where the witness can be~~
44 | ~~served, except when the defendant or the defendant's attorney has reason to~~

1 | believe that such address is not accurate for that witness at the time of service,
2 | or the person in fact no long works or resides at that address.

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