

10.3 Procedures for Obtaining Discovery

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10.3 Procedures for Obtaining Discovery

A. Motion and Order Required

The categories of information that each party is statutorily entitled to obtain are set forth in G.S. 7B-2300. *See infra* § 10.4, Juvenile’s Statutory Right to Discovery, and § 10.10, State’s Statutory Right to Discovery. Each statutory section providing for discovery requires that a motion be filed and an order obtained. G.S. 7B-2300. It is common practice to file a single motion identifying all the categories of information sought. A sample discovery motion is available on the [Office of the Juvenile Defender website](#). Counsel should ask that discovery be produced by a specific date and request a hearing on the motion, if necessary.

In some districts the prosecutor has an open file policy or the juvenile court counselor routinely provides discovery materials to the juvenile’s counsel. Even if discovery materials are voluntarily provided, counsel should file a discovery motion to protect the juvenile’s rights to discoverable information that might not have been provided by the State. In criminal cases in which the defendant has failed to make a formal request for discovery from the State pursuant to the statutory requirements, the courts have held that the defendant has no remedy if the State fails to produce the information voluntarily. *See State v. Abbott*, 320 N.C. 475, 483 (1987) (prosecutor not barred from using defendant’s statement at trial even though it was discoverable under statute and was not produced before trial; open-file discovery policy was no substitute for formal request and motion).

Counsel should therefore file a motion for discovery and secure an order compelling discovery to protect the juvenile’s rights in all cases. Although G.S. 7B-2300 does not require the court to enter a written discovery order, counsel should request a written order so the requirements of the order are clearly documented and preserved.

G.S. 15A-902(b), a part of the Criminal Procedure Act, requires an adult criminal defendant to make a written request for discovery before making a discovery motion. If the prosecutor voluntarily agrees to provide discovery in response to an adult defendant’s written request, the agreement is binding without an order of the court. There is not a specific provision to that effect in the Juvenile Code. The absence of such a provision further underscores the need for counsel to prepare and file a written, comprehensive motion for discovery in juvenile cases and obtain a court order.

B. When to File Motion

The Juvenile Code does not specify a deadline for moving for discovery. A motion for discovery should be filed early in the proceeding, however, so that counsel will have as much time as possible to review the information and evidence produced, investigate the evidence, and make additional motions if necessary. Discovery material may also be important for a probable cause hearing. Because adjudicatory hearings are usually set for hearing soon after the filing of the petition, discovery must proceed in a timely manner so that counsel will be prepared for the hearing. It is particularly important to act expeditiously with discovery and avoid unnecessary continuances when the juvenile is in secure custody pending adjudication.

C. Contents of Motion

A discovery motion should be broad enough to include all evidence and information covered by statute. Although cases after *Brady* have held that a specific request is not required, the motion should also ask for all exculpatory information to put the State on notice of the information it should produce and to strengthen the record in the event of an appeal. See *infra* § 10.4, Juvenile’s Statutory Right to Discovery, and § 10.5, Juvenile’s Constitutional Right to Disclosure of Exculpatory Evidence.

The motion for discovery should also request any other information believed to be helpful to the juvenile’s case regardless of whether the information is specified by statute. The duty to advocate zealously for the juvenile requires that counsel seek all evidence necessary to mount an effective defense.

Although the Juvenile Code does not set a deadline for production of discovery, counsel should request that the court specify a deadline in its order. Local rules in some districts provide deadlines for production of discovery. Counsel should be familiar with these rules to protect the juvenile’s rights.

D. Hearing on Motion for Discovery

The discovery statute does not specify that a hearing is required, as the wording is mandatory that “upon motion” the court “shall order” disclosure of the information. G.S. 7B-2300(a)–(d). It may be necessary to schedule a hearing and give notice, however, if required by the court, local rules or custom, or the State objects to entry of an order for discovery. Also, a hearing may be beneficial to obtain an order setting a deadline for production of discovery or if the State has not produced requested information in a timely manner.

At the hearing, counsel should be prepared to cite the statutory bases for disclosure of the material, as well as the constitutional bases for exculpatory material requested under *Brady*. See *infra* § 10.5, Juvenile’s Constitutional Right to Disclosure of Exculpatory Evidence.

E. Continuing Duty to Disclose

Each party who has been ordered to disclose information or evidence is under a continuing duty to disclose newly-discovered evidence that is subject to discovery. The other party must be given prompt notice of the new or additional evidence. G.S. 7B-2303. The State has an additional continuing duty under *Brady* and related cases to disclose evidence that is favorable to the juvenile and is material to the outcome of the case. *See infra* § 10.5, Juvenile's Constitutional Right to Disclosure of Exculpatory Evidence.

F. Continuances and Sanctions

Counsel may need additional time to review evidence that has just been disclosed by the State. In some instances, the failure of the State to disclose evidence under a discovery order in a timely manner may justify a continuance or other remedy for violation of the juvenile's statutory or constitutional rights. *See In re A.M.*, 220 N.C. App. 136, 138 (2012) (trial court erred by depriving juvenile of any remedy, such as granting a motion in limine or continuing the case, for the State's failure to disclose the name of a witness during discovery).

Likewise, counsel for the juvenile should promptly turn over required information to avoid a request for a continuance by the State or sanctions.