

Discovery Requirements in Maryland Criminal Trials

Changes to MD Rules 4-262, 4-263 and 4-301

Effective July 1, 2008, the State of Maryland Criminal Discovery Rules have significantly changed. A criminal defense attorney must be familiar with these changes and understand their potential impact on your case. For criminal and traffic offenses, you must have an experienced and well-informed attorney on your side.

When one is charged with a crime in the District Court of Maryland, they may have the opportunity to have their case be decided by a jury of their peers. If this option is available to a Defendant, and the Defendant requests a jury trial, then their case is transferred to the Circuit Court. The new Criminal Law Rules regarding jury demands now provides for different discovery rules depending on the method in which a Defendant asks for the jury trial: either by filing a formal request with the court no later than 15 days before the scheduled trial date, or by simply asking in “open court.”

When a defendant asks for a jury trial in open court – the more informal way – the discovery rules applicable to the case are the same as those used in District Court cases. This discovery is more limited and restrictive, as explained below. When a defendant asks for a jury trial with a timely filed written request, the defendant gets the benefit of a broader and more detailed version of discovery.

As of July 1, 2008, Defendants may now request more information than they were entitled to before from the State’s Attorney when a case is being tried under the District Court discovery rules. More detailed information is now available to the defense *if they request that information from the State’s Attorney*. This means that a defense attorney’s discovery request must be updated with language that mirrors what is now available under the new rule. Among some of the information now available are statements made by co-defendants, relevant material regarding searches, seizures, eavesdropping and electronic surveillance, and pretrial identifications by witnesses.

Circuit Court discovery also significantly changed, as of July 1, 2008. A new chief concern of a defense attorney should be what information the defense must turn over to the State’s Attorney. There is now an affirmative duty by the defense to turn over material whether or not the State requests it. This can have severe consequences for a defense team because should a defense attorney fail to turn over the required material, then that material, which could potentially be of great help to the defense strategy, may be excluded from trial and not considered by either the judge or the jury. Also, a discovery sanction may be ordered by the judge, which could range from declaring a mistrial to a warning from the judge, ultimately affecting the defense’s credibility.

It is important to be cognizant of these rule changes and to be confident that your attorney fully comprehends their practical application.

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