

FROM: Dave Vandenberg and Steve Jacobson, subcommittee members

RE: Status of Need for Rule Change

Phil Cherner has informed us that the legislative committee is diligently working on getting a statewide provider as directed by the statute. All this will be in place by 11/1/16 and everyone will shift to the new system. In the interim things would remain status quo and in the interim convicted defendants are being assessed a small fee over the next two years which will in effect pre-fund the state's account to help pay for everyone's discovery come 11/16.

So, there is no rush to change anything in Rule 16. It appears that the only eventual change needed would relate to Rule 16, Part V. (c):

Cost and Location of Discovery. The cost of duplicating any material discoverable under this rule shall be borne by the party receiving the material, based on the actual cost of copying the same to the party furnishing the material. Copies of any discovery provided to a defendant by court appointed counsel shall be paid for by the defendant. The place of discovery and furnishing of materials shall be at the office of the party furnishing it, or at a mutually agreeable location.

We should eventually start a discussion on the language to replace this. One suggestion would be something like:

"16. Part V. (c). Effective November 1, 2016, discoverable material shall be provided to the defense in compliance with established Statewide Discovery System benchmarks without reimbursement."

However, we think we need to first see the proposed benchmarks. For example, the rule could just say "provided to the defense in electronic format", but for all we know the benchmarks will have some opt out situations.

We propose continuing to have this on the agenda to review whether the benchmarks have been created and take action then.