


SPECIAL DIRECTIVE 19-08

TO: ALL DEPUTY DISTRICT ATTORNEY PERSONNEL

FROM:  JOSEPH P. ESPOSITO
Chief Deputy District Attorney

SUBJECT: DISCOVERY COMPLIANCE SYSTEM UPDATES

DATE: DECEMBER 17, 2019

This Special Directive modifies Chapter 14 of the Legal Policies Manual (LPM) and the Discovery Compliance System (DCS) Manual to:

- 1) Update Chapter 14 of the LPM to add section 14.03.01 (Juvenile Proceedings) and modify sections 14.02 (The *Brady* Rule), 14.03 (Penal Code § 1054.1), and 14.04 (Timing of Disclosure) to include juvenile matters;
- 2) Update LPM section 14.05 (Discovery Compliance System) to reflect that filing deputies and supervisor(s) shall be notified via an automated alert system at the time a case is filed when a recurring witness is identified in the DCS, and to further clarify when a deputy should access the DCS;
- 3) Clarify that LPM section 14.05.01 (*Brady* Database) provides that *Brady* information shall be turned over to the defense without a protective order;
- 4) Update LPM section 14.05.02 (ORWITS Database) to identify the various information sources that comprise the ORWITS database;
- 5) Clarify that LPM section 14.06 (Disclosure of Information Obtained from DCS) provides that a protective order and consultation with a supervisor are not necessary when disclosing publicly available information, such as information from a court record, a news article, a JSID declination, or a branch or area office declination involving a law enforcement officer, but are required when disclosing information from a Deputy Referral;
- 6) Clarify the process for referrals to the Discovery Compliance Unit (DCU) as described in section 14.08 (Deputy Referrals of Potentially Impeaching Information), and renumber and modify sections 14.08.01 (Filings and Declinations) and 14.08.02 (Deputy Referrals) of the LPM; and
- 7) Add subsection C to section VII of the DCS Manual (Defense Notification) to identify where to give notification when potential *Brady* information has been discovered, and the

defense attorney is (or was) a member of the Los Angeles County Public Defender's Office, the Los Angeles County Alternate Public Defender's Office, or is a private defense attorney who is now deceased.

The last paragraph and the Commentary of LPM § 14.02 are amended as follows:

14.02 THE BRADY RULE

California courts have held that prosecutors must disclose impeachment information before a defendant pleads guilty or no contest. Information establishing the factual innocence of a defendant, or that is otherwise materially exculpatory, shall be disclosed as soon as it becomes known. Plea waivers are neither intelligent nor voluntary if they are entered without knowledge of material evidence withheld by the prosecution. The Office's policy, therefore, is to disclose impeachment information prior to obtaining a plea of guilty or no contest from a defendant, or an admission from a minor.

Commentary

Although the Brady rule does not require the disclosure of impeachment evidence before a defendant pleads guilty or no contest, or when a minor enters an admission, California courts have upheld a due process requirement to do so. The integrity of the conviction or sustained juvenile petition requires disclosure of impeachment information prior to obtaining a plea of guilty or no contest from a defendant or an admission from a minor.

The Commentary to LPM § 14.03 is amended as follows:

14.03 PENAL CODE SECTION 1054.1

Commentary

Deputies should not utilize Chapter 14 as a substitute for researching legal issues that may arise in a case. Prior to trial or juvenile adjudication, deputies should meet with the investigating officer to review his or her file to make certain they are in possession of all relevant evidence.

LPM § 14.03.01 is added as follows:

14.03.01 JUVENILE PROCEEDINGS

Although discovery in juvenile proceedings is governed by California Rules of Court, Rule 5.546, it is the policy of the Office that the requirements set forth in Penal Code §§ 1054 to 1054.10 shall govern discovery protocols for all juvenile proceedings.

For juvenile proceedings, deputies shall disclose any potentially exculpatory and/or impeaching information, if available, at arraignment or prior to any substantive hearings, including *Gladys R.*, *Dennis H.*, or *William M.* hearings. If the information is not known at the time of any of these proceedings, it shall be disclosed as soon as it becomes known.

The third paragraph of LPM § 14.04 is amended as follows:

14.04 TIMING OF DISCLOSURE

During trial or juvenile adjudication, a deputy shall continue to comply with *Brady* and Penal Code § 1054.1(e)'s discovery obligations and provide potentially exculpatory and/or impeaching evidence as soon as it becomes known. After trial or juvenile adjudication, a deputy who acquires information which casts doubt upon the correctness of a conviction or sustained juvenile petition shall promptly disclose to the defense the new, favorable evidence.

The second and fifth paragraphs of LPM § 14.05 and the Commentary are amended as follows:

14.05 DISCOVERY COMPLIANCE SYSTEM

The DCU shall maintain the DCS, along with the underlying documents for each entry. The DCU shall also determine whether information pertaining to a recurrent witness shall be placed into the *Brady* or ORWITS databases. The DCS is interfaced with the Adult and Juvenile Subpoena Management Systems to notify a deputy by way of the Master Witness List (MWL) that a recurrent People's witness is in the DCS. Additionally, at the time the case is filed and witness information is entered, the filing deputy and supervisor(s) shall be notified whenever *Brady* or ORWITS information exists on a witness.

A deputy has an ongoing duty to disclose potentially exculpatory and impeaching information contained within the DCS. To meet this obligation, a deputy shall, at a minimum, check the DCS prior to preliminary hearing, 30 days before trial, and prior to any case disposition.

Commentary

Deputies reviewing matters for filing should check the DCS before filing complaints or juvenile petitions, if practical. Deputies presenting cases to the Grand Jury should check the DCS before eliciting testimony from a recurrent witness. If practical, deputies reviewing declarations in support of arrest warrants and affidavits in support of search warrants should check the DCS before approval. If a declarant or affiant is listed in the DCS, deputies should consider using another peace officer as a declarant or affiant or disclosing a summary of the potential impeachment material for the magistrate's consideration.

LPM § 14.05.01 is amended as follows:

The *Brady* database shall contain all exculpatory and impeaching information of recurrent witnesses that is discoverable per se. This includes felony and misdemeanor convictions or other misconduct that reflects on the credibility of a witness. This information shall be disclosed to the defense without a protective order even if the recurrent witness will not be called to testify.

The first paragraph of LPM § 14.05.02 is replaced as follows:

ORWITS is an informational database that contains material on recurrent witnesses that may be

constitutionally or statutorily discoverable depending on the facts of the case. The ORWITS database is comprised of information obtained from a variety of sources including, but not limited to, the media, public records, JSID declinations, a branch or area office declination involving a law enforcement officer, and deputy referrals.

The first paragraph of LPM § 14.06 is amended as follows:

14.06 DISCLOSURE OF INFORMATION OBTAINED FROM DCS

Deputies shall note the information learned from the DCS database in the DA file and, where appropriate, make certain the information remains confidential. Use or disclosure of confidential material beyond what is necessary to prosecute the case shall be avoided. Disclosure of DCS information shall be made on the record or in writing and noted in the DA file. A protective order and consultation with a supervisor are not necessary when disclosing publicly available information, such as information from a court record, a news article, a JSID declination, or a branch or area office declination involving a law enforcement officer. A deputy disclosing confidential information, such as information from a deputy referral, shall request the court to issue a protective order limiting the use of the information to the case before it is provided to the defense. A template for a protective order can be found in the Lotus Notes database under the DCS icon.

LPM § 14.08 is amended as follows:

14.08 DEPUTY REFERRALS OF POTENTIALLY IMPEACHING INFORMATION

Deputies shall refer potentially impeaching information regarding recurrent witnesses to the Bureau of Prosecution Support Operations Bureau Director. The referral process to be followed is described in LPM § 14.08.01. Entries based upon information contained within a deputy referral are considered attorney work product and confidential. Deputies have the discretion, in consultation with their supervisor, to determine whether to disclose information obtained from a deputy referral. Deputies shall summarize the entry and seek a protective order when disclosing this information. The Deputy Referral itself shall not be turned over to the defense.

LPM § 14.08.01 (Filings and Declinations) is renumbered to § 14.08.02, and § 14.08.02 (Deputy Referrals) is renumbered to § 14.08.01.

Subsection C to Section VII of the DCS Manual is added as follows:

C. DEFENSE NOTIFICATION

If the individual was represented by the Los Angeles County Public Defender's Office, the notification letter shall be emailed to Diana M. Teran, the Law Enforcement Accountability Advisor, at dteran@pubdef.lacounty.gov.

If the individual was represented by the Los Angeles County Alternate Public Defender's Office, the notification letter shall be emailed to lacapd@apd.lacounty.gov.

If the individual was represented by a private attorney who is now deceased, notification shall be mailed to the defendant. A “good faith” effort of notification is required.

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