

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

Top portion of form to be completed by the MCLE Provider

Provider Name: Ventura County District Attorney's Office

Provider Number: 1130

Title of Activity: Revised Informant Policy

Date(s) of Activity: February 12, 2016

Time of Activity: 10:00 - 11:00 am

Location of Activity (City, State): HOJ: Pacific Conference Room Ventura, CA

Total California MCLE Credit Hours for the above activity are 1.00, including the following sub-field credits:

- Legal Ethics _____
- Elimination of Bias in the Legal Profession _____
- Prevention, Detection and Treatment of Substance Abuse/Mental Illness that Impairs Professional Competence _____

Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity

By signing below, I certify that I participated in all, or some*, of the activity described above and am therefore entitled to the following MCLE credit hours -

Total California MCLE Credit Hours 1.00, including the following sub-field credits

Legal Ethics _____

Elimination of Bias in the Legal Profession _____

Prevention, Detection and Treatment of Substance Abuse / Mental Illness that Impairs Professional Competence _____

(You may not claim credit for sub-fields unless the Provider is granting credit in those areas and you participated in those portions of the activity)

Print Your Name _____

Your California State Bar Number _____

Signature _____

**P. USE OF IN-CUSTODY OR OUT-OF-CUSTODY
INFORMANTS WHO AGREE TO ENGAGE IN RECORDED
CONVERSATIONS WITH IN-CUSTODY OR OUT-OF-
CUSTODY SUSPECTS**

INTRODUCTION

This chapter covers potential informants who are non-percipient witnesses who law enforcement seeks to have participate in secretly recorded in-custody or out-of-custody conversations with a suspect. An informant in a "Perkins Operation" (*Illinois v. Perkins* (1990) 496 U.S. 292, 294) is covered by this chapter.

It covers such potential informants, whether law enforcement or the potential informant initiated contact, and whether or not they seek leniency or some other official favor in return for their testimony. The policy pertaining to leniency in return for testimony by a codefendant is covered in Article V of this manual.

The use of witnesses who seek leniency in return for testimony carries with it special risks which may have an impact beyond the involved case. The following policies and procedures apply, unless an exception has been approved by a chief deputy. The primary goal is to achieve justice by representing all truthful evidence in proving criminal charges, while avoiding unduly lenient treatment of informant witnesses.

**1. COMPLIANCE WITH IN-CUSTODY INFORMANT
STATUTES**

Policy applicable to situations in which the informant, acting on his/her own while in custody, has obtained information from an in-custody suspect and has disclosed that information to law enforcement, is set forth in Section O.

2. NOTICE TO UNIT SUPERVISOR AND CHIEF DEPUTY

A deputy wishing to use an informant as described in this section as a prosecution witness must obtain the prior written approval of the chief deputy of his/her division when the proposed informant faces a

life sentence. These requests should be routed through the supervisor.

All other requests to use an informant as described in this section must be approved in writing by the deputy district attorney's supervisor.

3. REQUEST TO USE AN INFORMANT

A written request to use an informant must include:

- a. A description of how contact was initiated between the potential informant and law enforcement.
- b. The name of the proposed informant and a detailed description the crimes, if any, for which the informant is currently incarcerated and the informant's criminal history.
- c. A description of the crime for which the informant is offering testimony.
- d. A detailed description of the evidence offered by the informant and whether or not that information was available to the informant other than through the statements of the defendant. For example, newspaper articles, documents found in the defendant's cell, etc.
- e. An analysis of the strengths and weaknesses of the case with and without the testimony of the informant.
- f. Any benefit promised to the informant by any member of law enforcement or any employee of the District Attorney's Office for the information offered on the pending case.
- g. A description of any prior offers to *provide* information from the jailhouse informant, whether he/she testified, the quality of the testimony and any and all promises made to or benefits provided, whether monetary or otherwise.

Note: In order to comply with this section, the trial deputy must ask his/her supervisor to check the *Central Informant Files Log* (See

section O, paragraph 10) to determine whether the proposed informant has offered to be an informant in the past. If we have dealt with the informant previously, the deputy should review the informant's file in the Central Informant Files See section O, paragraph 8). The information shall be included in the deputy's written request to use the informant. It is of paramount importance that the deputy district attorney stress to the officer seeking to use the informant that the District Attorney's Office must be presented all information relative to the credibility of the proposed informant and all consideration promised or given to the proposed informant by law enforcement.

4. INFORMANTS WHO HAVE COUNSEL

If a potential informant with a pending criminal case makes contact with a law enforcement representative and offers to provide testimony, extreme care must be taken to insure compliance with constitutional guarantees, rules of law and attorney ethics. The requesting officer shall be required to complete the "District Attorney Informant Use Form."

To the extent allowed by those rules, a deputy district attorney may direct a district attorney investigator or police officer to interview a potential informant in response to a contact initiated by the informant, where the informant's pending case is unrelated to the case on which the informant is a potential witness. A district attorney investigator may make such a responsive contact in his or her own discretion in an emergency situation. Absent an emergency, an investigator should consult the deputy district attorney assigned to the prosecution of the informant as well as the district attorney prosecuting the case where testimony is being offered before conducting an interview. Under no circumstances shall such an interview include a discussion of the informant's pending case unless the informant's attorney is present.

A deputy district attorney shall not contact or be present at an interview of a potential informant who has counsel on a pending case without the permission of counsel.

5. NEGOTIATIONS AND INVESTIGATION WHERE INFORMANT INTERVIEW HAS OCCURRED

When the initial contact with the informant has resulted in a tape-recorded interview by a police officer or DA investigator, the assigned deputy district attorney and investigator may, with supervisorial approval, proceed with an investigation. The credibility of the potential informant and the evidence shall be investigated as fully as possible. All such contact shall be documented in a "Confidential Informant Report" which shall be placed in the *Central Informant Files* and noted in the *Central Informant File Log*.

6. NEGOTIATIONS AND INVESTIGATION WHERE INFORMANT INTERVIEW HAS NOT OCCURRED

When the initial contact with the potential informant or counsel is in the form of an offer/request to supply/obtain information, the assigned deputy district attorney and investigator, with the handling deputy's supervisor's approval, may make arrangements with the potential unrepresented informant or counsel for a represented informant for a tape-recorded statement. Those arrangements shall be memorialized in a letter, which must be approved by the supervisor of the handling attorney. The letter shall be suitable for admission into evidence, and, at a minimum, include the following:

- a. The requirement for a complete and truthful statement concerning the matter for which the informant has offered testimony in a tape-recorded interview.
- b. If applicable, a DA commitment concerning use immunity for the statements offered.
- c. An indication that the District Attorney's Office has, as yet, made no commitment of any kind as to consideration for the possible cooperation.
- d. A statement that the District Attorney's Office reserves the right to void any future agreement if it concludes at any time that the potential witness has provided false information.

- e. A statement that any untruth by the potential witness may be the basis for criminal charges if it appears that an innocent person has been falsely implicated in a crime or that any criminal statute has been violated (in a death penalty case, the fact that a perjurer may himself be subject to the death penalty under Penal Code 128 should be specifically mentioned).
- f. Acknowledgement and signature line for the informant which acknowledges reading the letter and discussing it with counsel (if any), and expressly accepting the preliminary agreement and conditions as stated. The acknowledgment shall also include a promise to tell the complete truth about the matter at issue and a statement that he/she is acting freely and voluntarily.
- g. Acknowledgment and signature line for counsel which shall acknowledge reading the letter and discussing it with his/her client, and a statement that the letter accurately reflects the preliminary agreement.

A copy of the letter shall be included in the Central Informant File and a notation regarding such contact shall be noted in the Central Informant Log.

If the informant may have further contact with the accused after the tape-recorded interview, he or she must be admonished not to elicit information unless specifically authorized.

Following the interview, the assigned deputy district attorney and investigator may, with the handling deputy's supervisor's approval, proceed with an investigation of the credibility of the informant and the evidence.

7. AUTHORIZATION TO USE INFORMANT

After the potential witness has supplied the information and any necessary investigation has taken place, the chief deputy will evaluate its truthfulness and the appropriateness of any consideration on all life cases and the unit supervisor will evaluate the truthfulness and the appropriateness of any consideration on non-life cases.

Approval for the use of an informant witness and, if applicable, the granting of leniency or any other official favor may be sought by written request. In considering the request, the following shall be offered by the requesting deputy and considered:

- a. The preliminary letter referred to in the preceding section.
- b. The Confidential Preliminary Examination Memorandum or other summary of the case.
- c. A confidential summary of the expected testimony and the requested leniency or favors.
- d. A confidential summary of the background, criminal record, and credibility of the informant, including all known past occasions when the informant offered testimony.
- e. A confidential analysis and recommendation.

The unit supervisor or chief deputy will review the request and decide the matter and document the decision. All documentation referred to in this section shall be maintained by the authorizing authority for inclusion in the informant's file in the Central Informant Files and the decision shall be noted in the *Central Informant Files Log*. This documentation will normally be considered confidential office work product, so long as it contains no original discoverable information.

8. LETTER OF AGREEMENT

Upon approval of use of the informant witness and, if applicable, any leniency or other official action, the agreement shall be memorialized in a letter prepared by the deputy district attorney (signed by the authorizing authority) to the informant and his or her counsel. The letter shall be suitable for admission into evidence and, at a minimum, include:

- a. Items (d) and (e) from the preliminary letter (See paragraph 7, above).

- b. A clear summary of the agreement (including specifying all potential proceedings at which the informant will be expected to testify).
- c. Signature lines with appropriate acknowledgments by the potential witness and counsel.

The proffered leniency or other favors shall be conditioned upon the informant's complete and truthful testimony with a written provision that the agreement will be voided by a refusal to testify. The agreement shall also provide that the District Attorney's Office will resolve any questions about the informant's truthfulness on the witness stand.

A copy of this letter shall be forwarded to the authorizing authority through the chain of command and a copy shall be included in the Informant's Central File. Additionally, the informant's signed letter of agreement shall be noted in the *Central Informant Files Log* and included in the Central Informant Files.

Where appropriate and necessary, and if approved by the appropriate supervisor, formal immunity pursuant to Penal Code 1324 may be agreed upon, and the necessary documents prepared, copied and logged in the appropriate file.

Such letter shall be copied, sent and logged even where approval for testimony is granted in a case involving no consideration.

9. AFTER AN INFORMANT TESTIFIES

After an informant testifies, the deputy district attorney shall forward through the chain of command to the authorizing authority a "Confidential Informant Report" indicating the name of the informant, the name of the case in which the informant testified, the date of the testimony, a summary of the outcome, the deputy's impressions about the testimony, and comment on the informant's credibility. This report shall be maintained in the informant's file in the Central Informant Files.

The authorizing authority shall be responsible for identifying for the assigned data entry employee the information from the Confidential Informant Reports that should be entered into the Central Informant Files Log.

10. FABRICATION OF EVIDENCE BY AN INFORMANT

See LPM section O, 5.

11. DOCUMENTATION AND AUTHORIZING AUTHORITY

See LPM section O, 6.

12. CENTRAL INFORMANT FILES

See LPM section O, 8.

13. CENTRAL INFORMANT FILES LOG

See LPM section O, 10.

14. CONFIDENTIALITY AND DISCOVERY OBLIGATIONS


See LPM section O, 9.

**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA**

MEMORANDUM

February 10, 2016

TO: ALL ATTORNEYS
ALL INVESTIGATORS

FROM: JANICE L. MAURIZI 
CHIEF ASSISTANT DISTRICT ATTORNEY

SUBJECT: UPDATED INFORMANT POLICY

Attached is an updated informant policy which is in effect immediately. This policy will also be incorporated into our Legal Policies Manual which is available on the DA Web. This policy explains the protocols we will follow in the course of determining whether we will work with an informant and how we will keep records documenting our contacts with those who work as informants or seek to work as informants.

The updated policy includes protocols that require electronic record keeping and notifications. VCIJIS is currently being programmed so that when a filing attorney enters the name (defendant or witness) of someone included in our Central Informant Files log, a pop-up will appear on the computer screen notifying the filing attorney of this fact. The filing attorney will then contact his/her supervisor to gain permission to review the file on that individual maintained in our Central Informant Files to determine if this information should affect the decision to file.

Similarly, when the name of an individual who is working as an informant or seeking to work as an informant, is entered into the system as a witness or defendant, an e-mail notification will be sent to the assigned attorney directing him/her to request access to the file from his/her supervisor.

VCIJIS will be programmed to include all names which are close to the spelling of a name in our Central Informant Files Log when generating the alert. The programming of VCIJIS to create the above-described electronic notifications is not yet complete. You will be notified when you can expect to begin receiving the electronic notifications. In the meantime, you should continue to check our informant log and files if you have any reason to believe that a potential witness or defendant has worked or sought to work as an informant.

This memorandum summarizes the changes to our informant policy. Please make sure that you have read the entire updated policy prior to the use or proposed use of an informant.

JLM\cb

Attachment

O. USE OF JAILHOUSE INFORMANTS AS WITNESSES IN A CRIMINAL PROCEEDING.

INTRODUCTION

A jailhouse informant is a person other than a co-defendant, percipient witness, accomplice or co-conspirator whose testimony is based upon statements made by the defendant while both the defendant and the informant are held within a correctional institute. (Penal Code section 1127a(a))

This section shall apply only where the informant has disclosed to law enforcement statements alleged to have been made by the defendant about the facts and circumstances of the defendant's charged offenses which were made to the informant acting in his own capacity and unsolicited by law enforcement. See Section P when law enforcement seeks to have the informant participate in conversations with the defendant, whether recorded or unrecorded.

Commentary

There is a critical need for consistency in the handling of jailhouse informants. The integrity of this office and the integrity of our system of justice depends upon it.

It is the policy of this office to carefully evaluate and strictly control the use of jailhouse informants as witnesses. Before a jailhouse informant may be used as a witness, strong corroborative evidence is required. This corroborating evidence must consist of more than the fact that the informant appears to know details about the crime thought to be known only to law enforcement.

Deputies in this office properly view with caution the proposed testimony of any jailhouse informant. A deputy district attorney is by virtue of training and experience conscious of the self-interest of the jailhouse informant and actively mindful of the source, his background and his character. Further, since we are unalterably committed to the ascertainment of the truth, the informant's information is viewed through the prism of our ethical mandate.

Jailhouse informants may have incentive to gain incriminating evidence from a suspect. A deputy district attorney must always evaluate whether statements of a criminal suspect were made voluntarily. Thus, the dynamics of the setting in which the alleged statements were made should always be carefully evaluated.

1. COMPLIANCE WITH IN CUSTODY INFORMANT STATUTES

All deputy district attorneys and investigators shall be familiar with statutory and case law concerning in-custody informants, and shall comply with all such provisions, including:

- a. No law enforcement official shall give, offer, or promise to give any monetary payment in excess of fifty dollars (\$50.00) in return for an in-custody informant's testimony in any criminal proceeding. Penal Code 4001.1(a).
- b. Except where the right to counsel has not attached, no law enforcement agency and no in-custody informant may take any action deliberately designed to elicit incriminating remarks beyond merely listening to the statements of defendant. Penal Code 4001.1(b); *People v. Clair* (1992) 2 Cal.4th 629, 657. The court in *Clair* explained that the Sixth Amendment right to counsel is offense specific; thus, a target in custody on a charge for which the right to counsel has attached may still be actively questioned by the informant relative to an offense on which the right to counsel has not attached. See also *U.S. v. Percy* (9th Cir. 2001) 250 F.3d 720, 726. Statements deliberately elicited by a cellmate informant or a police officer posing as a cellmate are admissible even though no Miranda warnings are given, because there is no reason to presume the suspect will feel compelled to answer questions or make statements. *Illinois v. Perkins* (1990) 496 U.S. 292, 294. However, keep in mind that other circumstances could exist that may suggest statements were elicited in a coercive manner, thereby making the statements untrustworthy and inadmissible.
- c. The prosecutor shall make a good faith effort to notify any victim of a crime which was committed by or alleged to have been committed by the in-custody informant within a reasonable time before the in-custody informant is called to testify. Penal Code 1191.25.
- d. The prosecutor shall file with the court a written statement setting out any consideration promised or given to the in-custody informant. Penal Code 1127a(c).
- e. Upon request of a party, the court shall give a cautionary instruction to the jury concerning informant testimony. Penal Code 1127a (b).

2. NOTICE TO CHIEF ASSISTANT DISTRICT ATTORNEY

A deputy wishing to use a jailhouse informant (who was acting in his own capacity as described in the Introduction of this section) as a prosecution witness must obtain the prior written approval of the chief assistant district attorney. All requests to use such jailhouse informants must be submitted, in writing, to the chief assistant district attorney through the chain of command. The handling deputy district attorney shall notify his/her supervisor immediately when a potential jailhouse informant comes forward.

The written request to use a jailhouse informant must include:

- a. A description of how contact was initiated between the potential jailhouse informant and law enforcement.
- b. The name of the proposed informant and a description of his/her criminal history, including any gang affiliations.

- c. A detailed description of the crime for which the informant is offering testimony.
- d. A detailed description of the evidence offered by the informant.
- e. A description of the evidence corroborating the informant's proposed testimony and whether or not that information was available to the informant other than through the statements of the defendant. For example, newspaper articles, documents found in the defendant's or informant's cell, etc.
- f. An analysis of the strengths and weaknesses of the case with and without the testimony of the informant.
- g. Any benefit promised to the informant by any member of law enforcement or any employee of the District Attorney's Office for the information offered on the pending case.
- h. A description of any prior offers *to provide* information from the jailhouse informant, whether he/she testified, the quality of the testimony and any and all promises made to or benefits provided, whether monetary or otherwise.

Note: In order to comply with this section, the trial deputy must ask his/her supervisor to check the *Central Informant Files Log* (See paragraph 10, *infra*) to determine whether the proposed informant has offered to be an informant in the past. If we have dealt with the informant previously, the deputy should review the informant's file in the Central Informant Files (See paragraph 8, *infra*). The information shall be included in the deputy's written request to use the informant. It is of paramount importance that the deputy district attorney stress to the officer seeking to use the informant that the District Attorney's Office must be presented all information relative to the credibility of the proposed informant and all consideration promised or given to the proposed informant by law enforcement.

3. MEETING TO DISCUSS REQUEST FOR USE OF JAILHOUSE INFORMANT

The unit supervisor will forward the written request with his/her recommendation to the appropriate chief deputy. If the chief deputy agrees with a recommendation to use a jailhouse informant as a witness, the chief deputy will forward the request to the chief assistant district attorney for consideration. The chief assistant district attorney will convene a meeting to include the chief assistant district attorney, the chief deputy district attorneys, the special assistant district attorney, the chief of the bureau of investigation, the assigned district attorney investigator, the handling deputy district attorney and his/her supervisor. The information described in paragraph two, above, shall be considered in the decision to approve or disapprove the use of a jailhouse informant's testimony.

The chief assistant district attorney shall notify the requesting attorney of the decision in writing. The decision is final and no jailhouse informant as defined in this section may be called to the stand unless approved by the chief assistant district attorney in writing.

4. TRIAL DEPUTY RESPONSIBILITIES IF APPROVAL IS GRANTED

If the chief assistant district attorney approves the use of a jailhouse informant, the trial deputy must comply with the requirements of Penal Code section 1127a, 1191.25, and 4001.1, as outlined in paragraph one of this section.

If the jailhouse informant testifies, the trial deputy must submit a memorandum memorializing the event through the chain of command to the chief assistant district attorney for inclusion in the Central Informant Files Log and the informant's file in the Central Informant Files. The memorandum shall include:

- a. Name of jailhouse informant.
- b. Name and case number of the case in which the informant testified.
- c. Date of testimony.
- d. Synopsis of testimony and evaluation of credibility.
- e. Description of any consideration provided to the jailhouse informant in exchange for the testimony.

Although Penal Code section 4001.1, if strictly applied, pertains only to "in custody informants" held within a "correctional institution," it is office policy that its provisions apply to any custodial setting (i.e., jail, prison or youth correctional facility) and shall apply to any jailhouse informant testimony regardless of the informant's current custody status.

5. FABRICATION OF EVIDENCE BY JAILHOUSE INFORMANTS

Should a deputy acquire any information that a jailhouse informant is attempting to fabricate or has fabricated evidence during testimony, the deputy shall immediately notify the court and defense counsel and forward a memorandum setting forth all pertinent details through the chain of command to the chief assistant district attorney. E-mail transmission is acceptable. This information shall be included in the informant's file in the Central Informant Files and noted in the Central Informant Files Log. It is the continuing responsibility of all deputy district attorneys to ensure that any attempt to falsify evidence at any stage of the proceeding is readily known to all deputies considering the use of that jailhouse informant.

6. DOCUMENTATION AND AUTHORIZING AUTHORITY

"Confidential Informant Reports" should be generated by the handling deputy district attorney whenever significant events occur relative to the informant. A "Confidential Informant Report" is a memorandum memorializing significant events. Such events include, but are not limited to when a potential informant comes forward, performs significant work in a case, testifies and is

sentenced. Each "Confidential Informant Report" shall be routed through the chain of command to the authorizing authority.

The "authorizing authority" is the person in the chain of command who has authority to determine whether an informant may be used. In cases involving a jailhouse informant the authorizing authority is the chief assistant district attorney. If a decision is made down the chain of command from the authorizing authority that a potential informant may not be used, the matter need not proceed up the chain of command and the individual denying the use of the informant shall be responsible for directing the management assistant to document the decision not to use the informant and the reasons therefore in the Central Informant Files Log. For example, if the authorizing authority is a chief deputy (because the case involves a non-jailhouse informant) but a supervisor decides the potential informant may not be utilized, the supervisor need not forward the matter to the chief deputy. The supervisor shall be responsible for ensuring appropriate entries are made in the Central Informant Files Log.

An electronic copy of each "Confidential Informant Report" shall be sent by the creator of the document to the designated management assistant responsible for creating and maintaining informant files. The management assistant will ensure an electronic copy of the document is included in the informant's file maintained in the Central Informant Files. The management assistant will seek direction from the authorizing or denying authority regarding what language should be entered onto the Central Informant Files Log relative to the receipt of each "Confidential Informant Report."

All communication with a potential informant shall be fully documented by the handling deputy district attorney, district attorney investigator or police officer. It is the responsibility of the handling deputy district attorney to ensure required documentation is completed by the appropriate person. A deputy district attorney who is contacted directly by an informant shall document that contact and immediately notify the assigned investigator or police officer.

If a request to use a jailhouse informant is made by a member of law enforcement, the requesting officer shall complete the "District Attorney Informant Use Form." The handling deputy district attorney shall forward a copy of this completed form to the designated management assistant responsible for creating and maintaining informant files. The management assistant will ensure an electronic copy of the document is included in the informant's file and the Central Informant File log is updated to document the request.

7. JAILHOUSE INFORMANTS WHO HAVE COUNSEL

If a potential jailhouse informant with a pending criminal case makes contact with a law enforcement representative and offers to provide testimony, extreme care must be taken to insure compliance with constitutional guarantees, rules of law and attorney ethics. To the extent allowed by those rules, a deputy district attorney may direct a district attorney investigator or police officer to interview a potential jailhouse informant in response to a contact initiated by the jailhouse informant, where the jailhouse informant's pending case is unrelated to the case on which the jailhouse informant is a potential witness. A district attorney investigator may make such a

responsive contact in his or her own discretion in an emergency situation. Absent an emergency, an investigator should consult the deputy district attorney assigned to the prosecution of the jailhouse informant as well as the deputy district attorney prosecuting the case for which testimony is being offered before conducting an interview. Under no circumstances shall such an interview include a discussion of the jailhouse informant's pending case unless the informant's attorney is present.

A deputy district attorney shall not contact or be present at an interview of a potential jailhouse informant who has counsel on a pending case without the permission of counsel.

8. CENTRAL INFORMANT FILES

An informant file shall be created and maintained for:

- a. Jailhouse informants as described in Section O.
- b. Informants as described in Section P.

Upon receipt of a "Confidential Informant Report," the chief assistant district attorney, chief deputy district attorney or unit supervisor will authorize the creation of an electronic informant file if none exists. The designated management assistant shall be responsible for creating and maintaining individual informant files including jailhouse informant files.

It is the responsibility of the assigned deputy district attorney to insure that all documents and memoranda regarding the informant be placed in the informant file for future reference. Any deputy district attorney or district attorney investigator with a case-related need to know may request written authorization from his/her supervisor to review an informant's file or jailhouse informant's file. The authorization may be by email and should be delivered to the designated management assistant who will provide the file.

Documentation saved relative to informants prior to the effective date of this policy will be maintained in hard copy files in locked cabinets. Only designated management assistants will have a key to access these files. Documentation from the Central Informant Files may be copied as necessary for discovery and investigation purposes but no material may be removed.

The management assistant providing the file for review shall document in the "Central Informant Files Log" the date the file is provided, the name of the attorney or investigator who is taking possession of the file, the case or investigation for which the file is being reviewed and the date the file is returned.

When access to an electronic file has been provided and the review is completed, the attorney/investigator to whom the electronic file was provided shall send an email to the management assistant confirming that he/she has deleted their copy of the electronic file. It is the policy of the office that no copy of an informant's file shall be maintained outside of the Central Informant Files.

No hard file from the Central Informant Files may be removed from the Office of the District Attorney and no electronic file shall be transmitted electronically except from the designated management assistant to the requesting attorney's/investigator's office email address. During the period in which an attorney or investigator has checked out a hard file from the Central Informant Files, that file must be kept locked in the attorney's/investigator's office when the attorney/investigator is not in his/her office.

9. CONFIDENTIALITY AND DISCOVERY OBLIGATIONS

Copies made from an informant file must be carefully redacted prior to discovery. The utmost attention must be given to the confidentiality inherent in the relationship between the informant and law enforcement. Any questions about what information must be discovered should be resolved only after careful consideration of the discovery laws.

The prosecution has a duty, even in the absence of a request, to disclose all substantial material evidence favorable to an accused, whether such evidence relates directly to the question of guilt, to matters relevant to punishment, or to the credibility of a material witness. *People v. Ruthford* (1975) 14 Cal.3d 399, 406. Prosecutors have a duty to disclose exculpatory evidence possessed by, and known to, the law enforcement agencies participating in the case. *Kyles v. Whitley* (1995) 514 U.S. 419. Prosecutors are under a duty to make reasonable efforts to search within the law enforcement team for exculpatory information. *In Re Brown* (1988) 17 Cal.4th 873. The duty of discovery exists regardless of whether or not the prosecutor intends to use information from the informant in court.

When a question of discovery cannot be resolved by the handling attorney and his/her supervisor, the attorney should seek an ex parte hearing and request an order from the court relative to the issue.

The name of a confidential informant shall not be discovered without prior written supervisory approval, which may be communicated by email. Upon approval, the designated management assistant shall place a copy of the written approval in the informant's file and make an entry in the Central Informant Files Log, indicating the date the approval was granted, the name of the deputy district attorney to whom approval was granted, the name of the supervisor who approved the request, and the name and case number for which disclosure was permitted.

Once approval is granted, the deputy district attorney must contact the informant's handler with instructions that the informant be advised that his/her name and relevant activity is to be disclosed to the defense attorney. Discovery of the identity of an informant may only be made after the attorney has received confirmation that the informant has been advised of the pending notification. The deputy district attorney handling the case in which the informant's identity is disclosed shall obtain appropriate limiting orders from the court prior to discovery to limit the dissemination of the informant's name and conduct.

10. CENTRAL INFORMANT FILES LOG

The designated management assistant shall be responsible for the creation and maintenance of the Central Informant Files Log which shall contain an alphabetized list of all informants included in the Central Informant Files, as described above in paragraph 8. He/she shall also create a hyperlink entry for all documents submitted for inclusion in the informant's file.

Only the chief assistant district attorney, chief deputy of the Criminal Prosecutions Division, chief deputy of the Special Prosecutions Division, chief deputy of Administrative Services, chief investigator, designated management assistants and attorney and investigator supervisors shall have rights to view the Central Informant Files Log.

VCIJIS shall be programmed to alert the assigned deputy district attorney when the name of a witness that is entered into VCIJIS for subpoena purposes matches the name of an informant listed in the Central Informant Files Log. VCIJIS will also be programmed to alert the assigned deputy district attorney when a defendant is listed in the Central Informant Files Log. This will alert the assigned deputy district attorney to contact his/her supervisor for authorization to review the documents hyperlinked to the informant's name in the log and determine our discovery obligations.

A separate entry shall be made to the *Central Informant Files Log* by the designated management assistant upon the direction of the authorizing authority for each date a significant event occurs. Examples of significant events include, but are not limited to:

- a. The date an informant gives a proffer interview.
- b. The date an informant signs a contract.
- c. The date an informant gains significant evidence.
- d. The date an informant gives testimony.
- e. The date discovery of the informant is made to the defense in any case or the informant's cooperation with law enforcement is otherwise exposed, either purposely or by accident.
- f. The date an informant is sentenced or provided any benefit, including but not limited to money or accommodations.
- g. The date law enforcement determines the informant is no longer reliable and/or should not be used in the future.

Such events shall be documented in a Confidential Informant Report memorandum which shall be forwarded through the chain of command to the authorizing authority, who will then give the memorandum to the designated management assistant along with directions as to what information should be entered into the Central Informant Files Log. The management assistant

will also incorporate the memorandum into the hyperlink attached to the informant's name in the Central Informant Files Log. Entries to the log shall be made without regard to whether the deputy district attorney intends to request authorization to use the testimony or actually utilizes the information, and must contain, if applicable, at least the following information:

- a. The informant's name, all "aka's," and date of birth.
- b. Informant's court case number if applicable.
- c. Name of the attorney representing the informant if applicable.
- d. A short narrative description of the event memorialized and the date of the event.
- e. Court case file number of any case on which testimony is offered.
- f. A description of the informant's criminal record including a description of the charges for which the informant is currently incarcerated.
- g. Date discovery was provided in that case.
- h. A notation of any requests to review the file including the name of requestor, date of the request and reason for the review. If a hard copy file is removed for such review, the notation must include the date the file was removed and the date the file was returned. If an electronic file is provided to the requestor, the date of provision shall be recorded and the requestor shall notify the management assistant of the date the requestor deleted their copy of the electronic file so that date may be entered on the log.
- i. Any other significant information about the informant deemed relevant by the handling attorney, supervisor, chief deputy or chief assistant district attorney.

The confidentiality of any informant, including jailhouse informants must be protected at all times. No disclosure of information contained in the log or files is authorized except in order to comply with our legal and ethical requirements to fulfill discovery obligations and preserve the integrity of our justice system.

MANDATORY MCLE CLASS:

Topic: **Revised Informant Policy**
Date: October 12, 2015 (Court Holiday)
Time: ~~9:30 – 10:30 a.m.~~ **1:30 – 2:30**
Place: HOA: Lower Plaza Assembly Room
Speaker: Mike Frawley, Chief Deputy
MCLE: 1.00 hour general credit

This mandatory MCLE for all attorneys will review the newly revised policy regarding the use of informants.

The Ventura County District Attorney's Office is a State Bar of California approved MCLE provider. The above listed class will qualify for 1.00 hour of general MCLE credit by the State Bar.