

GENERAL OFFICE MEMORANDUM 21-121

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOSEPH F. INIGUEZ 
Chief of Staff

SUBJECT: DISCOVERY COMPLIANCE SYSTEM UPDATES AND REVISIONS

DATE: DECEMBER 1, 2021

The Discovery Compliance System Manual (Manual) provides a resource for LADA to effectively execute its obligation to provide exculpatory and impeachment information pursuant to *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*), *Giglio v. United States* (1972) 405 U.S. 150, and California's criminal discovery statute as codified in Penal Code section 1054.1, subdivision (e). The Manual has been updated to include recent case law governing impeachment material and LADA's new processes to handle and disseminate such information. This General Office Memorandum (GOM) only highlights some of the new policies outlined in the Manual; accordingly, all Deputy District Attorneys (DDAs) shall thoroughly review the entire Manual to ensure compliance with Office policy on Discovery. The Manual can be accessed in the LADANet>Library>Office Manuals>Discovery Compliance System Manual>.

DDAs should resolve questions relating to discovery in favor of disclosure. However, information in the Discovery Compliance System (DCS) may be limited and insufficient to satisfy a DDA's obligations under *Brady* as it does not contain all information which may be exculpatory on a particular case or impeaching on a particular witness.

Effective December 1, 2021, the Manual has been updated to include categories of impeachment evidence. Some of these categories involve, but are not limited to, evidence that a prosecution witness has violated an individual's constitutional rights, evidence of interest or other motive, and evidence of gang membership. In addition, the Manual now lists the Penal Code violations that California case law has held are crimes involving moral turpitude. While not an exhaustive list, DDAs are encouraged to conduct their own research and stay abreast of current case and statutory law.

Even where the witness is a peace officer, instances of misconduct involving moral turpitude or dishonesty not resulting in a conviction must also be disclosed. (*Association for Los Angeles Deputy Sheriffs (ALADS) v. Superior Court* (2019) 8 Cal.5th 28.) However, if the information qualifies as a confidential personnel record pursuant to Penal Code section 832.7, such a record cannot be disclosed except by discovery pursuant to section 1043 of the Evidence Code.

Documents containing evidence of potential police misconduct such as charge evaluation worksheets, police reports, use of force reports, and dishonesty or sexual assault findings made

public pursuant to Senate Bill 1421 are not considered confidential personnel records and can be disclosed without filing a *Pitchess*¹ motion.

DCS entries will often include supporting documents as attachments. Blanket protective orders have previously been sought for certain non-public materials disclosed to the defense. Forthwith, neither a blanket nor *ex-parte* protective order shall be sought prior to turning over documents containing *Brady* evidence. DDAs shall only seek protective orders on *Brady* material, which is not otherwise considered a confidential personnel record, upon a showing of good cause. Good cause may include, but is not limited to, situations in which disclosure of the documents would jeopardize an ongoing investigation or prosecution of the officer, or conduct in which disclosure would jeopardize the safety of the complaining victim or witness(es).

The DDA seeking a protective order must provide the defense with sufficient written notice of a request to seek a protective order to allow for a meaningful defense response. Protective orders must be narrowly tailored to prevent dissemination to the public and/or media. Where witness information is disclosed to the defense without a protective order and would impact the safety of the witness mentioned in the reports or their right to privacy such as when the person is a victim of a sexual assault, DDAs shall inform the individual(s) of the disclosure.

New responsibilities for DDAs who file cases have also been addressed. A filing DDA's involvement is concluded once the filing decision is made as a filing deputy does not have the practical means to transmit *Brady* information to defense counsel. However, a filing DDA is obligated to query the DCS to evaluate potential impeachment information in making their filing decision, and to notate their review and the impact of that information, if any, in the case file.

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¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.