



Prosecuting Attorneys Association of Michigan

BEST PRACTICES RECOMMENDATION *BRADY/GIGLIO* MATERIAL

In *Brady v Maryland*, 373 US 83, (1963), the United States Supreme Court held that it is the duty of the prosecuting attorney in a criminal trial to disclose to the defense, material information that is favorable to the defendant. Failure to disclose such evidence may violate due process if the evidence is material to either guilt or punishment, regardless of the “good faith or bad faith of the prosecution.” In *Giglio v United States*, 405 US 150 (1972), the Court made clear that *Brady* information includes not only information directly related to the crime, but also, under certain circumstances, information that would negatively affect the credibility of a prosecution witness.

Because prosecutors have an obligation to assure a defendant is provided a fair trial, to meet the demands of disclosure under *Brady* and its progeny, as well as applicable statutes and court rules, the Prosecuting Attorneys Association of Michigan (PAAM) recommends:

- Prosecutors remain well-informed as to the legal requirements of *Brady* and its progeny, as well as any laws or court rules which bear on these obligations. Continuing education in this area is essential, particularly for new prosecutors.
- Prosecutors shall be responsible for knowing applicable discovery obligations, as well as the duty to disclose material exculpatory and impeachment evidence. This obligation should not be delegated to support staff, but is the responsibility of the case attorney.
- In order to fulfill the constitutional requirement of *Giglio*, prosecutors should contact police agencies within their jurisdiction to advise them of the duty to disclose impeachment evidence and to develop procedures to determine whether such information exists concerning a law enforcement officer.
- *Brady/Giglio* materials must be disclosed even in the absence of a request from the defendant and must be disclosed in a timely manner.
- Prosecutors should coordinate with police agencies to ensure that all supplemental reports and case information are turned over to the prosecution.

- Prosecutors should determine whether their office possesses potential impeachment evidence regarding a witness. This determination should include, but is not limited to, for example, searching the case management system used by the prosecutor's office to determine whether the witness has been charged with or convicted of an impeachable crime, or has agreed to cooperate pursuant to a plea agreement.
- If there is a question regarding the necessity of disclosing any particular piece of information it may be advisable to file a motion with the court for an in camera review to obtain a ruling.
- When conducting a *Brady/Giglio* review, prosecutors should use their individual discretion to determine the disclosable facts specific to each case. If uncertain whether disclosure is appropriate, the case attorney should review the applicable law and consult with other staff and/or prosecution resources, always against the backdrop of the obligation to ensure the defendant's right to a fair trial.
- Prosecutors should adopt office practices and procedures to assist in fulfilling these obligations.

A best practices recommendation by the Prosecuting Attorneys Association of Michigan (PAAM) is the product of careful consideration of experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible or desirable to implement in every jurisdiction. There may be other methods in local jurisdictions to reach the same or similar objectives.

Date approved by PAAM: June 17, 2016