

Tarrant County Criminal District Attorney's Office
Laboratories and Medical Examiner's Office
Disclosure Compliance

The United States Supreme Court has long held that evidence that could potentially assist in the defense of an individual accused of a crime *must* be disclosed to the defense. Failure to disclose can result in the reversal of a conviction and, for extreme violations of the rule, prosecution of violators. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

The duty to disclose rests primarily with prosecuting attorneys but information known to law enforcement agencies – even if never disclosed by those agencies to the prosecution -- is still imputed to the prosecution. Timely disclosure of exculpatory, impeachment and mitigating information is also required under the “Michael Morton Act”, TEX. CODE CRIM. PROC. art. 39.14(h). Article 39.14 contains no materiality provision for disclosing exculpatory or impeachment evidence. Given that members of your Agency often testify in criminal cases as “expert” witnesses regarding evidentiary testing our office must be informed of anything that could possibly constitute impeachment evidence.

The goal of the Criminal District Attorney is to exercise due diligence in light of our responsibility under the Brady doctrine and Article 39.14 and ensure that all defendants receive a fair trial. Therefore, it is a critical inquiry whether an employee's conduct, personnel history or information from a personnel file might constitute exculpatory, impeachment or mitigating information in a particular criminal case.

We confidently rely on the professional practices of our Agency partners in notifying us about any conduct of employees which meets our legal obligations.

Laboratory/Medical Examiner Obligation to Notify

Each respective Laboratory or Medical Examiner's Office (“Agency”) should determine whether there are any such instances listed below about which the Tarrant County Criminal District Attorney's Office (“CDA”) should be made aware. In that regard, the Agency should examine current and future employee personnel files and current and future employee conduct and notify the CDA as soon as possible when:

- 1) an employee has a pending criminal complaint or indictment or is the subject of an ongoing criminal investigation for any crime other than a Class C misdemeanor traffic violation;
- 2) an employee has a disposed felony or misdemeanor, other than a Class C misdemeanor traffic violation, committed at any time that resulted in a final conviction, probation, deferred adjudication, or pretrial diversion;

- 3) an employee has a pending formal investigation, sustained finding, or conclusion by the Agency for any of the following:
 - a. misrepresentation or failure to disclose a material fact on the employee's application;
 - b. untruthfulness or deception regarding facts in a report, statement, hearing, or official proceeding; or
 - c. bias or prejudice to an individual, class, or group of persons;
 - d. tampering, concealing or intentional misuse of evidence, with the exception of legitimate manipulation in the normal scope of laboratory business.
- 4) an employee resigns, receives a demotion, or disciplinary action when an investigation is imminent or pending, involving any matter listed in subsection 1,2, 3 (a) – (d) above or in relation to 5, 6 or 7 below;
- 5) the Agency has information related to an expert witness's performance deficiencies that affect the integrity of the reported results.
- 6) an employee or the Agency has a pending formal investigation or conclusion that there was professional misconduct or professional negligence as defined by Rule 1.2 of the Texas Forensic Science Commission ("TFSC") Policies and Procedures and as required to be reported to the TFSC under Texas Code of Criminal Procedure 38.01(4)(a), or the applicable accrediting body for that Agency, or
- 7) an employee or the Agency has a reportable event required to be disclosed to the TFSC or the applicable accrediting body for the Agency. Any subsequent action by the TFSC or accrediting body, or any subsequently required root cause analysis, as well as the findings of those actions or analysis, should also be conveyed to the CDA for its consideration.

Compliance Procedure

Agency Process

- Furnish to the CDA discovery compliance attorney the employee's name, licensing identification number (if any), and a brief description of the finding and relevant related information.
- Notify whether the disclosure is classified as a "pending formal investigation" or "final" conclusion. Pending formal investigation or final conclusion is defined in a manner consistent with the Agency's individual rules and procedures.

- Update the CDA of any changes to classifications or if removal from the database is warranted after the completion of the investigation.
- Contact the CDA if in doubt about whether the conduct requires disclosure.

Criminal District Attorney Process

- Rely on the due process provided by the Agency through disciplinary or other internal proceedings and will not re-litigate findings.
- Categorize the disclosure as either “Pending” or “Final” as relayed by the Agency and notify the Agency of inclusion in the database. The Pending category will contain information submitted about pending formal investigations. If Pending allegations are sustained, the inclusion will be re-categorized as Final. If the allegations are not sustained, the case will be removed from the database.
- Update the Agency regarding any reclassification or removals.
- Classify any allegations that, if sustained would lead to a “Final” classification, but in which the employee resigns before the investigating body makes formal findings as “Final” and maintain this information in the database unless and until good cause is shown for its removal.
- Notify the Agency of information independently discovered by the CDA, which may warrant inclusion in the database. If a prosecutor initiates a claim of untruthfulness from conduct occurring during judicial proceedings, the individual prosecutor must also immediately report such incident to the prosecutor’s supervisor for the investigation and initiation of a charge of perjury against the employee.
- Each ACDA shall check the database and notify opposing counsel of inclusions. “Pending” notices should be made to the defense but not filed in the records of the court unless done under seal or with the appropriate requests to the trial court for inspection and orders.
- Disclosure information will be used to meet the State’s obligation under the law with respect to cases that we prosecute.
- Sponsorship of an employee in the database will be made on a case by case basis.

- Disclosure does not equal admissibility and, when appropriate, the CDA will object to the admissibility of the disclosed evidence through written motions and argument.
- Disclose upon employee written request his or her own inclusion in the database for any “Final” disclosure.
- Disclose a person’s inclusion in the database to a potential employer agency with an executed waiver by applicant to the Agency.

For the purposes of 7) above a reportable event is one which 1) impacts the fundamental reliability of the overall laboratory/agency work product such that it poses a significant risk to processes, results, test/calibration items or judicial proceedings; or 2) does not impact the fundamental reliability of the overall laboratory/agency work product but does cast substantial doubt on the quality of the work product.

A reportable event does not include nonconformity of applications of standards, procedures or policies that are limited and appropriately addressed during quality assurance or control protocols and attendant conducted root cause analysis, provided that such nonconformity is contained and disclosed within the bench notes of any affected case(s).