



**OFFICE OF THE DISTRICT ATTORNEY
TENTH JUDICIAL DISTRICT, COLORADO
J.E. CHOSTNER
District Attorney**

**10th Judicial District Attorney Policy and Procedure:
Peace Officer Credibility Disclosures from Law Enforcement Agencies**

I. POLICY

- a. The 10th Judicial District Attorney Office is committed to following the Colorado Rules of Professional Conduct, including Rule 3.8 - Special Responsibilities of a Prosecutor.

As relevant to witness (including peace officer) credibility disclosures, Rule 3.8(d) states:

“The prosecutor in a criminal case shall timely disclose to the defense all information known to the prosecutor, regardless of admissibility, that the prosecutor also knows or reasonably should know tends to negate the guilt of the accused or mitigate the offense, or would affect a defendant's decision about whether to accept a plea disposition, except when the prosecutor is relieved of this responsibility by statute, rule, or protective order of the tribunal. This information includes all unprivileged and unprotected mitigation information the prosecutor knows or reasonably should know could affect the sentence. A prosecutor may not condition plea negotiations on postponing disclosure of information known to the prosecutor that negates the guilt of the accused. A prosecutor must make diligent efforts to obtain information subject to this rule that the prosecutor knows or reasonably should know exists by making timely disclosure requests to agencies known to the prosecutor to be involved in the case, and alerting the defense to the information if the prosecutor is unable to obtain it;”

II. PROCEDURE

- a. *Process for Receiving Peace Officer Credibility Disclosure Notifications from Law Enforcement Agencies.*

The 10th Judicial District Attorney contact(s) to whom law enforcement agencies should send peace officer credibility disclosure notifications are: the Elected District Attorney or the Assistant District Attorney.

- b. *Process for Maintaining Current Record of All Peace Officer Credibility Disclosure Notifications from Law Enforcement Agencies.*

After review by the District Attorney or Assistant District Attorney, the credibility disclosure notifications are given to the District Attorney Office Legal Systems Manager, who scans and saves them into a database server. These records distinguish between a law enforcement agency's

“sustained findings,” and “open investigations” with respect to the peace officer. The presence of a credibility disclosure notification is denoted in each District Attorney office file where the peace officer is endorsed as a witness, visible to every member of the office who views the file.

- c. *Process for Public Access to the statewide Peace Officer Standards and Training (P.O.S.T) Peace Officer Database.*

This statewide database, which includes information related to peace officer untruthfulness, and actions serving as a basis for a credibility disclosure notification, can be accessed by going to post.colorado.gov and clicking on “Peace Officer Database.”

- d. *Process for Notice to the Defense of Peace Officer Credibility Disclosure Notifications from Law Enforcement Agencies.*

The 10th Judicial District Attorney Office timely notifies defense counsel, or a pro se defendant, of all credibility disclosure notifications received by the DA Office from a Law Enforcement Agency. Notice consists of disclosing the notification electronically to defense counsel or disclosing the notification paper copy by U.S. mail to a pro se defendant, in all open cases where the peace officer is endorsed as a witness. This notice process is repeated in any future case where the peace officer is endorsed as a witness.

Law Enforcement Agencies in the 10th Judicial District are instructed by the District Attorney to send peace officer notifications in any situation covered by Colorado Rule of Conduct 3.8(d), and to not limit notifications to the statutory definition of “Credibility Disclosure Notification” quoted below in part IV.

- e. *Process for Removing Peace Officer Credibility Disclosure Notification Received from Law Enforcement Agencies:*

“District Attorneys shall remove credibility disclosure notification records from the district attorney’s records and notification procedures under the following circumstances:

1. When a law enforcement agency made a credibility disclosure notification about an open criminal or administrative investigation...and subsequently notifies the district attorney that the agency concluded through its administrative process that the criminal or administrative allegations are not sustained based on the merits, and the law enforcement agency or peace officer makes a written request that the district attorney’s office remove the credibility disclosure notification from the district attorney’s records.
2. When a district attorney makes an independent determination, based on a review of the underlying records (if access to the underlying records is granted by the agency, officer, or by court order) that removal is appropriate or lawful.

3. When a district attorney receives a court order directing the district attorney to remove the credibility notification records.” *C.R.S. 16-2.5-502 (1); Peace Officer Credibility Disclosure Notifications Model Policy section V. C.*

III. REVIEW OF POLICY AND PROCEDURE

- a. “Each district attorney shall review [their] policies and procedures...at least every four (4) years to ensure compliance with controlling federal and state case law interpreting *Brady v. Maryland*, 373 U.S.83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995), and its progeny; as well as the Colorado rules of criminal procedure.” *C.R.S. 16-2.5-502(4); Peace Officer Credibility Disclosure Notifications Model Policy section V. D.*
- b. The 10th Judicial District Attorney Office will continuously follow current Colorado Rules of Professional Conduct, including Rule 3.8 – Special Responsibilities of a Prosecutor. The latest version of Rule 3.8(d), quoted above in part I. POLICY, became effective one year after passage of C.R.S. 16-2.5-501 & 502, the Peace Officer Credibility Disclosure Notifications statute. Whenever Rule 3.8(d) requires more expansive peace officer credibility disclosures, or longer retention of peace officer credibility disclosures, than the Peace Officer Credibility Disclosure Notifications statute and its model policy requires, the 10th Judicial District Attorney Office will follow Rule 3.8(d).

With respect to witness (including peace officer) credibility disclosures, following the requirements of Colorado Rule of Professional Conduct 3.8(d) ensures compliance with controlling federal and state case law interpreting *Brady v. Maryland*, 373 U.S.83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995), and its progeny; as well as the Colorado rules of criminal procedure.

IV. STATUTORY DEFINITIONS

“**Credibility Disclosure Notification**” means a prompt notification from a law enforcement agency to the district attorney of any sustained finding that a peace officer has: (A) Knowingly made an untruthful statement concerning a material fact, knowingly omitted a material fact in an official criminal justice record, or knowingly omitted a material fact while testifying under oath or during an internal affairs investigation or administrative investigation and disciplinary process; (B) Demonstrated a bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class; (C) Tampered with or fabricated evidence; or (D) Been convicted of any crime involving dishonesty, been charged in a criminal proceeding with any felony or any crime involving dishonesty, or violated any policy of the law enforcement agency regarding dishonesty. *C.R.S 16-2.5-501 (1); 16-2.5-502 (2)(c)(I).*

A law enforcement agency is also obligated to notify the district attorney’s office when: (A) A peace officer is a potential witness in a pending criminal prosecution in which a criminal defendant has been formally charged; (B) The peace officer is under a concurrent criminal or administrative

investigation regarding an allegation related to the peace officer's involvement in the defendant's pending criminal case; and (C) The result of the concurrent criminal or administrative investigation, if sustained, would require disclosure. *C.R.S. 16-2.5-501 (1); 16-2.5-502 (2)(c)(II).*

“Law Enforcement Agency” means a state or local agency that employs peace officers. *C.R.S. 16-2.5-501 (2).*

“Peace Officer” means a peace officer as defined in CRS 24-31-901 (3) and includes an officer, reserve, volunteer, or employee who performs a law enforcement function. *C.R.S. 16-2.5-501 (3).*

V. STATUTORILY AUTHORIZED MODEL POLICY DEFINITIONS

“Untruthfulness” or “dishonesty” means conduct that involves a knowing misrepresentation, including but not limited to intentionally untruthful statements, knowing omissions of material information, and knowingly providing or withholding information with an intent to deceive or mislead. *Peace Officer Credibility Disclosure Notifications Model Policy section II.D.*

“Sustained Finding” means a final determination by a law enforcement agency, following a law enforcement agency’s administrative procedure for investigating and reviewing alleged misconduct by a peace officer on the merits. *Peace Officer Credibility Disclosure Notifications Model Policy section II.E.*