
MONMOUTH COUNTY
UNIFORM POLICY

**Identifying, Obtaining and
Reviewing
Brady / Giglio Material**

March 1, 2020

I. PURPOSE

The purpose of this policy is to establish a procedure to assist Monmouth County Prosecutor's Office assistant prosecutors in meeting their obligations to disclose exculpatory witness impeachment material pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972).

Assistant Prosecutors have a legal and ethical duty to disclose exculpatory evidence to the defense.¹ Exculpatory evidence is evidence which is favorable to the defendant and material to the issues of guilt or punishment.² Exculpatory evidence also includes impeachment evidence, or evidence which affects a witness's credibility.³ "Evidence impeaching the testimony of a government witness falls within the Brady rule when the reliability of the witness may be determinative of a criminal defendant's guilt or innocence." State v. Carter, 91 N.J. 30, 111 (1981). Such impeachment material will herein be referred to as "Brady/Giglio material."

It is the practice of this office to turn over exculpatory information in our case file at the earliest possible juncture. Brady material, or "exculpatory evidence", may come in a variety of forms including:

1. Evidence linking a State's witness to the crime for which defendant is being charged. State v. Landano, 271 N.J. Super. 1 (App. Div.), certif. denied 137 N.J. 164 (1994);
2. Evidence related to defendant's theory of third-party guilt. State v. Smith, 224 N.J. 36, 50 (2016);
3. Potentially exculpatory polygraph test of State's witness. State v. Carter, 85 N.J. 30 (1981); and
4. Prior inconsistent and exculpatory statements made by a State's witness. State v. Cahill, 125 N.J. Super. 492 (Law. Div. 1973).

It is further the practice of this office to turn over impeachment information pertaining to civilian witnesses who are testifying witnesses at trial, for example:

1. Bias: A witness can be impeached with evidence that he or she has a bias against the defendant or in favor of the State (actual or potential exposure to criminal penalties, leniency/plea agreement, payments, immigration benefits, etc.);

¹ Brady v. Maryland, 373 U.S. 83 (1963) (holding that a prosecutor violates due process where he suppresses evidence that is favorable to the defendant and material to guilt or punishment).

N.J.C.R. 3:13-3, Discovery and Inspection ("Discovery shall include exculpatory information or material").

Rule of Professional Conduct 3.8, Special Responsibility of a Prosecutor (Prosecutor shall "make timely disclosure to the defense of all evidence known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense).

² Brady, 373 U.S. at 87.

³ Giglio v. United States, 405 U.S. 150 (1972) (holding that impeachment material is Brady material); State v. Carter, 69 N.J. 420 (1976) (holding that impeachment material is Brady material).

2. Specific Instances of Dishonesty: A witness can be impeached with evidence of a prior act of misconduct involving dishonesty, even if it has not resulted in a criminal charge or conviction. This includes lying and falsifying records. N.J.R.E. 608.
3. Criminal Conviction. N.J.R.E. 613.
4. Prior Inconsistent Statements. N.J.R.E. 613.

We recognize, however, the possibility that a local law enforcement agency may be in possession of potential Brady/Giglio impeachment information about a police officer witness or civilian witness employed by the law enforcement agency that is not part of our case file. Accordingly, this policy specifically sets forth a procedure for identifying, obtaining, and reviewing impeachment information, which will often be in the possession of local law enforcement agencies within Monmouth County. The cooperation of local police agencies is essential in this regard because a prosecutor's duty includes a requirement that the prosecutor learn of any evidence favorable to the defendant that is known to those acting on the State's behalf, including local police departments.⁴ Further, this duty requires disclosure of Brady/Giglio material whether or not the defense makes a request for such information.⁵

Thus, this policy ensures that assistant prosecutors receive sufficient information to meet their Brady/Giglio obligations and to protect a defendant's right to a fair trial, while also protecting the confidentiality rights of police officers.

This policy has been revised and updated in compliance with the Directive 2019-6, Establishing County Policies to Comply with Brady v. Maryland and Giglio v. United States, issued by the Attorney General's on December 4, 2019.

II. POLICY

It is the policy of the Monmouth County Prosecutor's Office to establish a procedure for identifying, obtaining and reviewing Brady/Giglio material related to law enforcement witnesses who may testify in matters prosecuted by the this office. The term "law enforcement witness" used herein is synonymous with the term "investigative employee" in Attorney General's Directive 2019-6 and includes police officers as well as civilians employed by law enforcement agencies such as dispatchers, New Jersey State Police Lab personnel, and analysts. Both synonymous terms are used in this policy.

It is the further policy of the Monmouth County Prosecutor's Office to satisfy its Brady/Giglio obligations in a manner that respects the confidentiality of internal affairs matters, which are often the subject of Brady/Giglio review.⁶ There are significant consequences in both regards. The possible consequences of a Brady/Giglio violation are (1) the Court orders disclosure of the material at issue; (2) continuance of a trial for further investigation; (3) reversal of a conviction or sentence; and/or (4) withdrawal of a previously entered guilty plea. The impact of a Brady/Giglio disclosure to a police officer includes (1) harm to his/her reputation; (2) privacy implications; (3) his/her role as a police officer may be limited in the future; and (4) possible adverse employment action.

⁴ Kyles v. Whitley, 514 U.S. 419, 437 (1995).

⁵ United States v. Bagley, 473 U.S. 667 (1985).

⁶ Per the Attorney General's Internal Affairs Policy and Procedures (revised December 2019, p. 56) internal affairs matters are confidential and should only be released under limited circumstances. The County Prosecutor has the authority to direct the release of an internal investigation and must do so where necessary to satisfy our obligations under Brady and Giglio.

This policy does not create a bright-line rule with respect to what is and what is not Brady/Giglio material. Further, this policy does not address the issue of what Brady/Giglio material the assistant prosecutor must produce to the defense or to the Court for *ex parte* or *in camera* review. These determinations can only be made after potential Brady/Giglio material is identified, reviewed, and evaluated in relation to the specific facts of a given case and any known or anticipated defenses. Certain conduct by a police officer may be Brady/Giglio material under the facts of one case, but not under the facts of different case.

III. DEFINITIONS

A. Definition of Potential Brady/Giglio Material

The following categories of evidence constitute potential law enforcement witness impeachment material under Brady/Giglio:

1. A sustained finding that a law enforcement witness has filed a false report or submitted a false certification in any criminal, administrative, employment, financial or insurance matter in his or her professional or personal life.
2. A sustained finding that a law enforcement witness was untruthful or has demonstrated a lack of candor.
3. A pending criminal charge or conviction for any crime, disorderly persons, petty disorderly persons, municipal ordinance or driving while intoxicated matter, noting that any such charges or convictions will be reviewed for disclosure under N.J.R.E. 609.
4. A sustained finding that undermines or contradicts a police officer's educational achievements or qualifications as an expert witness.
5. A finding of fact by a judicial authority or administrative tribunal that is known to the employee's agency which includes a finding that the law enforcement witness was *intentionally* untruthful in a matter, either verbally or in writing.
6. A sustained finding, or judicial finding, that a law enforcement witness intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and their investigative employees should disclose findings or allegations that relate to substantive violations concerning (1) the intentional failure to follow legal or departmental requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications; (2) the intentional failure to comply with agency procedures for supervising the activities of a cooperating person; and (3) the intentional failure to follow mandatory protocols with regard to the forensic analysis of evidence.⁷
7. Any allegation of misconduct bearing upon truthfulness, bias or integrity that is the subject of a pending investigation.

⁷ This category does not include incidents deemed by a supervisory authority to be a mistake or done in error without intention, even in cases where the incident was sustained. For example, if an officer failed to follow a mandatory protocol due to a misunderstanding, and that mistake resulted in a sustained finding, that would not be considered Giglio information for purposes of disclosure.

8. Information that may be used to suggest that the investigative employee is biased for or against a defendant. See United States v. Abel, 469 U.S. 45, 52 (1984). The Supreme Court has stated, “Bias is a term used in the ‘common law of evidence’ to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party.” Bias may be induced by a witness’ like, dislike, or fear of a party, or by the witness’ self-interest.”; and
9. A sustained finding, or judicial finding, that a law enforcement witness is biased against a particular-class of people. For example, based on a person’s gender, gender identity, race or ethnic group.

The categories set forth above are taken directly from Attorney General Directive 2019-6.

B. Definition of “Sustained Finding”⁸

“Sustained finding” refers to any finding where a preponderance of the evidence shows an officer violated any law, regulation, directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure, rule or training, following the last supervisory review of the incident(s) during the internal affairs review process or a ruling by a hearing officer, arbitrator, Administrative Law Judge, or the Superior Court.

Allegations that cannot be sustained, are not credible, or have resulted in the exoneration of an employee, including where the previous Giglio finding has either been vacated, or overturned on the merits in any subsequent action, generally are not considered to be potential impeachment information, subject to the requirements herein.

On the other hand, if the officer negotiates a plea or there is an administrative or civil settlement with the employer whereby the Giglio-related charge is dismissed, the charge would still be considered sustained if there was sufficient credible evidence to prove the allegation, and the officer does not challenge the finding and obtain a favorable ruling by a hearing officer, arbitrator, Administrative Law Judge or the Superior Court.

In reviewing dispositions reached before the issuance of the Attorney General’s Directive 2019-6, prosecutors must be mindful that officers may not have had an incentive to challenge the Giglio-related charges or findings when the overall negotiated disposition of the matter was acceptable to the officer. Likewise, agencies may not have had an incentive to pursue such charges or findings. Therefore, in such cases, prosecutors must thoroughly review the entire investigative file before making determinations on the disclosure of Giglio related charges that were ultimately dismissed as part of an administrative or civil settlement. Prosecutors should also review the underlying facts of any sustained charge, rather than rely on the abbreviated title or top-level characterization of the charge, in making Giglio determinations.

IV. REQUEST FOR BRADY/GIGLIO MATERIAL

When this policy goes into effect, the Director of the Professional Responsibility Unit (“Director”), who is also herein designated as the Brady/Giglio officer, shall contact the Internal Affairs Officer for each local police agency in Monmouth County and (1) provide them with the within Policy; (2) remind them

⁸ Attorney General Directive 2019-6 contains two definitions of “Sustained Finding” (Section I.C. on page 2 and footnote 2 on page 4). These definitions are similar, but have slight differences. The definition of “Sustained Finding” contained herein reflects the language from both definitions in Directive 2019-6.

of their duty to disclose the aforementioned Brady/Giglio material; and (3) direct that they review their records to determine if any of their officers have matters that potentially fall into one of the categories listed in section III.A. above.

This review shall be conducted for all current police officers and for any officers who have retired/left the police agency within the past three (3) years (and who thus, may still be a potential witness in a pending case).

Allegations that cannot be substantiated, are not credible, or have resulted in exoneration of a police officer are generally not considered to be potential impeachment information; however, any doubt about whether an officer's conduct may be Brady/Giglio material should result in disclosure to this office for review.

If the Internal Affairs Officer's review reveals that a police officer has potential Brady/Giglio material, the Internal Affairs officer must immediately contact the Director to discuss the matter.

If the Internal Affairs officer's review reveals that no officers within the department have potential Brady/Giglio impeachment material, the Internal Affairs Officer must notify the Director, in writing, that such review was conducted and that no officers have matters which qualify as Brady/Giglio material under section III.A of this policy. This notification shall be submitted via the following assigned email address for Brady/Giglio matters: bradyresponse@mcponj.org.

This review and notification process shall be completed within 60 days of the effective date of this policy.

It should be noted that as of the date this revised policy was enacted, all local law enforcement agencies within the County completed this audit. The results of this audit were reviewed by the First Assistant Prosecutor, Deputy First Assistant Prosecutor, and Director in conjunction with each other. These results comprise a mechanism or system that allows, on a case-by-case basis, for the identification of officers with potential Brady/Giglio material. This mechanism or system is amenable to updating and modification, and will be updated as new law enforcement witnesses with potential Brady/Giglio material are identified through agency disclosure, witness disclosure, or the Brady/Giglio information gathering process on a specific case.

V. CONTINUING DUTY TO DISCLOSE

Per the Attorney General's Internal Affairs Policy and Procedures, Requirement 9.10.3 (revised December 2019), law enforcement agencies have a duty to disclose potential Brady/Giglio material pertaining to both civilian and sworn employees to the appropriate County Prosecutor's Office so the material may be reviewed for potential disclosure.

The duty of local agencies to disclose Brady/Giglio material to this office is a continuing duty. A local agency must immediately contact the Director should a law enforcement witness be involved in a matter which fits into one of the categories listed in section III.A above.

VI. AFFIRMATIVE DUTY TO DISCLOSE

Every employee of a law enforcement agency who may be a witness in a criminal case has an affirmative duty to disclose to the assigned Assistant Prosecutor any potential Brady/Giglio material known to that individual at the time that criminal charges are filed in the matter and an Assistant Prosecutor is assigned. Should such a disclosure be made, the Assistant Prosecutor shall consult with the Brady/Giglio officer and the process outlined below in sections VII.I and VIII shall commence.

VII. BRADY/GIGLIO PROCEDURE FOR GATERING AND IDENTIFICATION

A. Timing

The following procedure to identify and obtain Brady/Giglio material must be followed by Assistant Prosecutors (1) when a plea cutoff form is executed and a matter is listed for trial; and/or (2) when a testimonial hearing is scheduled in a matter. The Assistant Prosecutor must institute this process within one week of the execution of the plea cutoff form or the scheduling of the testimonial hearing.

Brady obligations apply prior to the entry of a guilty plea.⁹ It is expected that the review process outlined in section IV, in conjunction with the continuing duty to disclose in section V, and the affirmative obligation to disclose outlined in section VI, will satisfy our obligations with respect to potential impeachment materials prior to the entry of the substantial amount of guilty pleas negotiated by this office.

Further, the Professional Responsibility Unit shall maintain a system for identifying law enforcement witnesses with potential Brady/Giglio issues and notifying Assistant Prosecutors with active cases involving such law enforcement witness so each assistant prosecutor can act accordingly. That said, should an Assistant Prosecutor have any concern about Brady/Giglio materials pertaining to a witness in a case prior to the entry of the guilty plea, he/she should refrain from entering the plea until the process outlined below is followed.

B. Witnesses

The procedure should be followed for all law enforcement witnesses (civilian and sworn) that the Assistant Prosecutor reasonably expects will testify at the trial or the testimonial hearing.¹⁰

C. Initiating the Procedure

Within one week of the execution of a plea cut-off form or the scheduling of a testimonial hearing, the Assistant Prosecutor must fill out a form (attached as Form A) listing the date of the trial/testimonial hearing and the police officers that are reasonably expected to testify at this proceeding. The Assistant Prosecutor must also list the agency of each police officer.

The Assistant Prosecutor shall submit this form to the Professional Responsibility Unit via the aforementioned email account, bradyresponse@mcponj.org.

D. MCPO Review

The Professional Responsibility Unit will notify the First Assistant Prosecutor (“FAP”)¹¹ and Secretary to the Deputy Chief of the Monmouth County Prosecutor’s Office (“Deputy Chief”) of any witnesses listed on Form A who are detectives or civilian employees of this office. The Secretary to the Deputy Chief will provide any internal affairs files to the FAP, who will review the files to ensure that each MCPO witness has no matters falling into one of the categories in section III.A above.

⁹ State v. Parsons, 341 N.J. Super. 448, 454-55 (App. Div. 2001); State v. Landano, 271 N.J. Super. 1, 43 (App. Div. 1994).

¹¹ The FAP may designate someone to fulfill the duties described in this section in his/her absence or to fulfill the duties of the Secretary to the Deputy Chief in his/her absence.

Should no Brady/Giglio materials be found, the FAP shall respond to bradyresponse@mcponj.org that he/she conducted the review and found no Brady/Giglio materials. The Director will note in Infoshare that the review was negative for Brady/Giglio materials.

Should potential Brady/Giglio materials be found, the FAP shall review the materials and determine, in consultation with the Director and Assistant Prosecutor if appropriate, if Brady/Giglio disclosure must be made.

E. Local Law Enforcement Agency Review

With respect to local police officers identified by the Assistant Prosecutor on Form A as witnesses, the Professional Responsibility Unit shall:

1. Search its own files to determine if any police officers listed as witnesses have matters known to the Unit which fall into one of the Brady/Giglio categories listed in section III. A above; and
2. Send a letter to both the agency's Internal Affairs officer and the police officer witness, requesting that they acknowledge the existence of any potential Brady/Giglio material (Form B). This letter requires both the agency's Internal Affairs officer and the police officer witness to certify, in writing, that they have nothing in their background or currently pending that constitutes potential Brady/Giglio material.

The Internal Affairs Officer must submit the fully executed Form B to the Professional Responsibility Unit via the email address identified above, bradyresponse@mcponj.org.

In addition to executing Form B, the Internal Affairs Officer must also conduct a review of the agency's files to determine if the officer has prior sustained internal affairs matters or any pending internal affairs matters. Should the officer have prior sustained internal affairs matters or any pending internal affairs matters, the Internal Affairs Officer shall also submit to this office (along with the executed copy of Form B) an Executive Summary of these matters including (1) date of the incident; (2) brief summary of the facts; and (3) disposition as "sustained" or indicate the matter is "pending". This summary may be submitted on Form C, attached. This Executive Summary shall be updated by the Internal Affairs Officer should any new internal affairs matters arise while the underlying criminal case remains pending. The summary described herein should also be sent via email to bradyresponse@mcponj.org. If the law enforcement witness has no prior sustained or pending internal affairs matters, the Internal Affairs Officer shall indicate in writing that the witness has no such matters.

The Professional Responsibility Unit will maintain records of the dates that Brady/Giglio checks were performed on specific law enforcement witnesses. If a law enforcement witness has been the subject of a formal Brady/Giglio check within the past year (i.e., the witness certified a "Form B" and has had their sustained and pending IA matters reviewed by the Director with negative results), the Unit may conduct a check by contacting the Internal Affairs Officer to determine if the witness has had any IA matters since the last Brady/Giglio check. This allows for an abbreviated process where a more thorough check was recently performed.

F. New Jersey State Police Review

The New Jersey State Police (NJSP) Civil Proceedings Unit (CPU) within the Office of Professional Standards has initiated an electronic request system utilizing the eDiscovery

platform already in place for all County Prosecutor's Offices. Brady/Giglio requests can be made to the NJSP directly through this eDiscovery system for both enlisted members and civilian employees (such as NJSP lab personnel). The NJSP CPU will respond with either a notation of "No Giglio Material" or "Potential Giglio Material." If potential Giglio material exists for a member, the response will include the sustained allegation(s) and/or reference the related OPS investigation(s) and the subsequent file(s) can be requested and provided through the eDiscovery system.

The Director, or his/her designee, shall have access to the NJSP eDiscovery system. Upon being provided with a Form A listing an employee of the New Jersey State Police, the Director, or his/her designee, shall submit a Brady/Giglio request through the system and note the response. Should potential Brady/Giglio material exist, the Director shall request such information which will then be reviewed in accordance with this policy.

G. Out-of-Jurisdiction Brady/Giglio Checks

On occasion, a police officer from an agency outside of Monmouth County may become an essential witness in a criminal case in Monmouth County. Officers who are employed outside of Monmouth County are not bound by this policy. Further, officers from other counties or states may be bound by different Brady/Giglio procedures or no formal procedures at all.

It is the responsibility of the Assistant Prosecutor assigned to a case in which an out-of-jurisdiction officer is an essential witness to obtain the contact information from the witness for the appropriate Brady/Giglio officer in that jurisdiction. The AP should include that contact information on "Form A".

When "Form A" contains this information, the Brady/Giglio Officer will make reasonable efforts to conduct a Brady/Giglio check on the out-of-jurisdiction officer in a manner that complies with the spirit of this policy. Should the Brady/Giglio Officer be unable to complete this check, the Brady/Giglio Officer will advise the Assistant Prosecutor and encourage the Assistant Prosecutor to have a "candid conversation" with the out-of-jurisdiction officer about any potential Brady/Giglio material in his/her background. If the Assistant Prosecutor does not include the necessary contact information on "Form A", it will be the sole responsibility of the Assistant Prosecutor to have a "candid conversation" with the out-of-jurisdiction police officer to ensure there is no Brady/Giglio material to disclose.

H. Initial Review by "Brady/Giglio Officer"

As indicated above, the Director shall be designated as the agency's "Brady/Giglio Officer."¹²

The Brady/Giglio Officer shall review any positive results from the Unit's search of its own files, the responses submitted by the state or local agency, as well as each Executive Summary. The Brady/Giglio Officer shall make a threshold determination if further review of any of the law enforcement witness's matters is warranted. This procedure ensures that internal affairs matters

¹² The First Assistant Prosecutor shall designate a backup Brady/Giglio officer to carry out the Director's responsibilities under this policy in his/her absence or to assist the Director with these obligations when necessary.

that have no bearing on a police officer's credibility are reviewed by this office, but that they also remain confidential with limited access.

If, after this threshold review, the Brady/Giglio Officer determines that no disclosure is warranted, he/she shall note in Infoshare that the review was conducted and no Brady/Giglio materials were discovered.

Should the Brady/Giglio Officer determine that there is a matter pertaining to a law enforcement witness that warrants further Brady/Giglio review, he/she shall notify that agency's Internal Affairs Officer and obtain a copy of the agency's file.

I. Assistant Prosecutor Review

The assigned Assistant Prosecutor shall review the file with the Brady/Giglio Officer. Files containing potential Brady/Giglio material shall be maintained in the Professional Responsibility Unit unless and until it is determined that disclosure of the materials in such file is necessary. A complete copy of all materials reviewed in this process must be maintained in the file.

The Assistant Prosecutor must determine if any information or documents in the file is Brady/Giglio material. The Brady/Giglio Officer shall assist the Assistant Prosecutor with this determination.

If the material is determined to not be Brady/Giglio material, the Brady/Giglio officer shall make a note in the file itself that states that a review was conducted and the material was determined to not be Brady/Giglio material.

If the material is determined to be Brady/Giglio material or if there are questions whether or not the material should be disclosed, the Assistant Prosecutor shall prepare a memo outlining his/her position to the FAP.

VIII. BRADY/GIGLIO DISCLOSURE DECISION

The First Assistant shall review the memo and determine, in consultation with the Assistant Prosecutor, and the Brady/Giglio Officer, and any other designee of the FAP, whether disclosure is required under Brady/Giglio and if so, what materials must be disclosed. This evaluation requires a review of the potential impeachment information in light of the facts of the case, role of the witness in the case, potential defenses, and evidentiary rules.

If this review determines that the materials shall not be disclosed, the Brady/Giglio Officer shall make a note in the file itself that states that a review was conducted and the material was determined to not be Brady/Giglio material.

If this review determines that the materials must be disclosed, the FAP shall sign off on the Assistant Prosecutor's memo, thus authorizing the disclosure. A determination must then be made as to exactly what materials will be disclosed and how disclosure will be made. Additionally, it must be determined if the law enforcement witness should not be called to testify at the trial and if the matter can be tried without that officer's testimony.

Disclosure of exculpatory evidence does not equate with admissibility. The New Jersey Rules of Evidence place limits on what evidence is admissible in court and specifically, what evidence may be

used to challenge a witness's credibility.¹³ There may be instances where this office authorizes the disclosure of exculpatory evidence but argues that such is inadmissible at trial under the New Jersey Rules of Evidence. This is an additional determination that must be made on a case-by-case basis.

The Brady/Giglio Officer shall assist in these determinations when requested/needed. In all instances, the Director (Brady/Giglio Officer) must be made aware of all decisions made in this regard as such may affect other pending or future cases.

IX. METHOD OF DISCLOSURE

This policy does not set forth a bright line rule for disclosing Brady/Giglio materials. This determination will be dependent on the facts of the case and the known/anticipated defenses. It is possible that material will be disclosed in one case, but not in another based on different facts and circumstances. It is possible that the methods of disclosure will vary by case.

There are a variety of options with respect to disclosure of Brady/Giglio materials including (1) turn the information over to defense counsel without restriction; (2) turn the information over to defense counsel with redactions to protect the privacy interests of third parties or the witness; (3) seek an *ex parte in camera* review by the Court to determine if in fact questionable Brady/Giglio materials must be disclosed; and/or (4) seek a protective order from the Court pursuant to N.J.C.R. 3:13-3(e), prohibiting the dissemination of the materials by the defense or limiting their use.

Where the Brady/Giglio information stems from a confidential internal affairs file, the MCPO shall seek protective orders to limit the use and further dissemination of Brady/Giglio materials and shall seek any redactions necessary to protect the privacy interests of third parties and investigative personnel.

All options should be discussed during the review process set forth in section VIII above.

X. NOTIFICATION TO LOCAL AGENCY

Prior to disclosure of Brady/Giglio material to either the defense or to the Court for *in camera* review, the Brady/Giglio officer shall notify the Chief and/or Internal Affairs Officer of the law enforcement agency of the intention to disclose. The Assistant Prosecutor and/or the Brady/Giglio officer shall notify the law enforcement witness of the intention to disclose. This will serve as an opportunity for the agency and law enforcement witness to verify the accuracy of the noted Brady/Giglio material. A general objection to disclosure by the agency or law enforcement witness will not override the constitutional obligation for this office to disclose Brady/Giglio material.

¹³ N.J.R.E. 405, Methods of Proving Character (providing methods of proof of character and stating that "specific instances of conduct not the subject of a conviction of a crime shall be inadmissible" unless the trait is an essential element of the charge or defense).

N.J.R.E. 607, Credibility and Neutralization (stating that any party may examine a witness and introduce extrinsic evidence relevant to the issue of credibility and listing limitations on this rule).

N.J.R.E. 608, Evidence of Character for Truthfulness or Untruthfulness and Prior False Accusations (providing limitations on proving a witness's character for truthfulness or untruthfulness).

N.J.R.E. 609, Impeachment by Evidence of Conviction of Crime (providing that a witness's credibility may be impeached with evidence of a prior criminal conviction)

If this office discloses Brady/Giglio material, the Brady/Giglio Officer shall send a letter to the Chief, Internal Affairs Officer, and law enforcement witness (1) informing them of the Brady/Giglio disclosure; (2) identifying what information was disclosed; (3) informing them of any decision by the Court as to the admissibility of the information; and (4) if appropriate, indicating if the police officer witness was not called to testify because of the Brady/Giglio materials. The Brady/Giglio Officer shall also provide the agency and law enforcement witness with copies of all disclosed materials.

If disclosure is not made, but an Assistant Prosecutor makes the decision not to use an individual as a testifying witness at hearing or trial because of Brady/Giglio concerns, or if potential Brady/Giglio information about a law enforcement witness substantially affected a case in any way (i.e., resulted in a dismissal, plea bargain, etc.), the Brady/Giglio officer shall notify the Internal Affairs Officer of that agency of that decision.

XI. CONFIDENTIALITY

Personnel and internal affairs files are confidential materials and will not be released except as pursuant to this policy. Identifying, obtaining and reviewing potential Brady/Giglio materials is a confidential process. Assistant Prosecutors who review confidential internal affairs materials must keep those matters confidential. This confidentiality requirement is in effect unless and until such time as it is determined that Brady/Giglio material shall be released to the defense and/or the Court under the procedure provided herein.

XII. MAINTENANCE OF BRADY/GIGLIO RECORDS

Copies of Form A (witness list) and Form B (letter/responses from Internal Affairs Officers and police officer witnesses), and Form C/ Executive Summaries of sustained or pending IA matters, where all responses are *negative* (i.e., no potential Brady/Giglio information is identified) shall be maintained in a binder/file in the Professional Responsibility Unit.

Copies of Form B where *positive* responses are received, Form C/Executive Summaries of sustained or pending internal affairs matters indicating potential Brady/Giglio information, copies of any internal affairs documents reviewed, memos to the First Assistant, and any other documents generated during this process that reflect and involve a review of potential Brady/Giglio material shall be maintained in hardcopy in a separate file in the Professional Responsibility Unit.

Documents which are ultimately released to the defense pursuant to this procedure shall then be maintained in the underlying criminal case file in a separate envelope marked “Brady/Giglio confidential material.”

XIII. EFFECTIVE DATE

This Policy is effective as of March 1, 2020.