

CUMBERLAND COUNTY PROSECUTOR’S OFFICE STANDARD OPERATING PROCEDURES		
SUBJECT: BRADY/GIGLIO WITNESS IMPEACHMENT MATERIAL		
EFFECTIVE DATE: October 13, 2020	NUMBER OF PAGES: 4	
ACCREDITATION STANDARDS: N/A	BY THE ORDER OF: Jennifer Webb-McRae, Cumberland County Prosecutor	

I. BACKGROUND AND PURPOSE:

The United States Supreme Court decided in Brady v. Maryland, 373 U.S. 83 (1963) that prosecutors are required to disclose to defendants any favorable material known to the prosecution. In Kyles v. Whitley, 514 U.S. 419, 437 (1995) the Supreme Court expanded the Brady doctrine whereby "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in a case, including the police." Exculpatory evidence falls within Brady and consists of evidence which is material to guilt or punishment. State v. Parson, 341 N.J. Super. 448, 454-455 (App. Div. 2001). This includes evidence which may be utilized to impeach the credibility of a prosecution witness. Giglio v. United States, 405 U.S. 150 (1972); State v. Carter, 69 N.J. 420, 433 (1976). The purpose of this Standard Operating Procedure ("SOP") is to establish a system to assist assistant prosecutors with their duty to meet Brady and Giglio obligations and to avoid a Brady/Giglio violation in regard to failing to disclose impeachment material.

II. POLICY:

It shall be the Standard Operating Procedure ("SOP") and policy of the Cumberland County Prosecutor's Office ("CCPO") to establish and maintain a system so that potential impeachment material and documentation may be obtained from law enforcement agencies and then reviewed by Assistant Prosecutors ("APs"). This SOP does not address the issue of what information the AP must disclose or produce to the defense or to the court for *ex parte*, *in camera* review. That determination can only be made after the AP has reviewed the potential impeachment materials in the context of the facts of the case, and has obtained supervisory approval pursuant to the CCPO July 23, 2020 Policy to Ensure Compliance with Attorney General Enforcement Directive 2019-6 (Directive Establishing County Policies to Comply with Brady v. Maryland and Giglio v. United States) ("CCPO Brady/Giglio Policy"). This SOP is directed and limited to the Gathering (Obtaining) of potential Brady/Giglio impeachment material relating to law enforcement officers who are designated in Attorney General Enforcement Directive 2019-6 as "investigative employees".

III. PROCEDURE:

A. DEFINITION OF POTENTIAL BRADY/GIGLIO IMPEACHMENT MATERIAL

1. A sustained finding that an investigative employee has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life.
2. A sustained finding that an investigative employee was untruthful or has demonstrated a lack of candor.
3. A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, 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 an investigative employee'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 investigative employee was *intentionally* untruthful in a matter, either verbally or in writing.
6. A substantiated finding, or judicial finding, that an investigative employee intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and 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. 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/investigative employee 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. Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation.
9. 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".

10. A sustained finding, or judicial finding, that an investigative employee is biased against a particular class of people, for example, based on a person's gender, gender identity, race, or ethnic group.

B. GATHERING OF IMPEACHMENT MATERIAL

1. The AP shall make an Investigative Assignment request in the Infoshare system to the Unit supervisor of the CCPO Professional Standards Unit ("PSU") requesting that PSU contact the applicable law enforcement agency to determine the existence of witness impeachment material and obtain such material. When the AP makes the request an Investigative Assignment in Infoshare shall be created. The AP shall complete all the fields necessary for that request. The "NOTE" section, which is a free dialogue box, shall be utilized. The requesting AP shall list all the officers/investigative employees associated with the case about whom the Brady/Giglio inquiry shall be conducted. The information shall include the name(s), badge number, and agency of the officer/investigative employee. The AP may list more than one officer/investigative employee in one inquiry request.
2. Upon receipt of the Infoshare Investigative Assignment request from the AP, a designated member of the PSU shall then utilize Form A(attached), when necessary, to contact the law enforcement agency by whom the law enforcement officer/investigative employee is employed, requesting advisement of the existence of potential Brady/Giglio witness impeachment material in the categories listed on the Form A letter. Form A may be transmitted via email. If potential Brady/Giglio material is noted by any "Yes" response to the Form A letter received from the law enforcement agency, PSU shall request and obtain all documentation relating to the potential impeachment material. The PSU member may utilize whatever form of transmittal is deemed to be most efficient to obtain Brady/Giglio witness impeachment materials. To the extent the materials can be obtained electronically, this method of transmittal is preferred. However, it is recognized that with respect to older Internal Affairs files which may be maintained by law enforcement agencies, paper transmittal may be necessary. ***(Form A and the materials which may be obtained are confidential CCPO Attorney Work Product and are not to be released except as set forth and permitted pursuant to the CCPO Brady/Giglio Policy, dated July 23, 2020.)***
3. Form A is unnecessary to access CCPO files where the Infoshare Investigative Assignment request lists a CCPO detective. The PSU maintains documentation relating to Brady/Giglio witness impeachment materials for CCPO detectives. AP review in such cases should generally follow the procedure outlined in this SOP and the CCPO Brady/Giglio Policy.
4. Upon receipt of the law enforcement agency's file, the designated PSU member shall make notification to the requesting AP by either indicating "Negative" next to that officer's/investigative employee's name in the original request, or by indicating "Potential Brady/Giglio Material – Contact PSU" next to the officer's/investigative employee's name. PSU shall make the materials obtained available to the AP for review. This review shall take place within the confines of the PSU. Materials shall

not be copied by the AP (by paper, electronically or otherwise). It shall be the responsibility of the AP to independently review the potential Brady/Giglio witness impeachment materials and determine whether, to what extent and/or in what manner disclosure to defense counsel and/or the court shall occur. APs shall be guided by the CCPO Brady/Giglio Policy. This SOP addresses and is limited to what is described in the CCPO Brady/Giglio Policy as the Gathering function. It is therefore designed to assist PSU and APs concerning the Gathering process. Issues relating to disclosure of Brady/Giglio material and the admission of such materials into evidence are solely the function and responsibility of the assistant prosecutor assigned to a particular case and his/her supervisor(s).

C. DISCLOSURE AND ADMISSION INTO EVIDENCE OF BRADY/GIGLIO MATERIAL

APs shall follow the CCPO Brady/Giglio Policy with respect to their Brady/Giglio responsibilities.

D. CONFIDENTIALITY

The obtaining and the disclosure of potential Brady/Giglio witness impeachment materials is considered a confidential process. As such, all documents requested and obtained shall be kept confidential and secured in the aforementioned manner. Brady/Giglio witness impeachment materials shall be released to the defense and/or the court only as permitted and set forth pursuant to the CCPO Brady/Giglio Policy.

E. GIGLIO LIAISON

If PSU or the assigned AP have any questions concerning its responsibilities in the gathering of potential Brady/Giglio material, the PSU member or the AP (or their supervisors) shall contact the Giglio liaison (i.e. the First Assistant Prosecutor) for direction. The Giglio liaison may as necessary to address disclosure issues access the documents maintained by PSU and, in the Liaison's discretion, copy such documents to perform his/her analysis. Any documents copied shall bear the notation.

Form A



OFFICE OF THE COUNTY PROSECUTOR
JENNIFER WEBB-MCRAE
CUMBERLAND COUNTY PROSECUTOR

Harold B. Shapiro
First Assistant Prosecutor

Richard E. Necelis
Chief of Investigators

115 Vine Street
Bridgeton, New Jersey 08302
Telephone (856)453-0486
Fax (856)451-1507

Date

Attention:
Agency:
Internal Affairs/Professional Standards Unit
Address

Sir/Madam:

In preparation for the trial, or hearing or other proceeding in State v. _____, the Cumberland County Prosecutors Office ("CCPO"), pursuant to *Brady/Giglio* disclosure requirements, requests confirmation of any material or documentation involving Law Enforcement Officer/Investigative Employee _____ which falls within any of the following categories:

1. A sustained finding that an investigative employee 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. Y / N
2. A sustained finding that an investigative employee was untruthful or has demonstrated a lack of candor. Y / N
3. A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, or driving while intoxicated matter, noting that any such charges or convictions will be reviewed for disclosure under N.J.R.E. 609. Y / N

4. A sustained finding that undermines or contradicts an investigative employee's educational achievements or qualifications as an expert witness. Y / N
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 investigative employee was *intentionally* untruthful in a matter, either verbally or in writing. Y / N
6. A substantiated finding, or judicial finding, that an investigative employee intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and 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.
 - a. 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/investigative employee 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. Y / N
7. Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation. Y/ N
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."). Y / N
9. A sustained finding, or judicial finding, that an investigative employee is biased against a particular class of people, for example, based on a person's gender, gender identity, race or ethnic group. Y/ N

This form was completed by:

Print Name: _____

Signature: _____

Please circle the appropriate response Yes (Y) or No (N) and sign, affirming the information is true and accurate to the best of your ability. Then return this form to the Professional Standards Unit ("PSU") via email. Upon receipt of a yes response, the CCPO PSU shall then contact your agency to obtain the underlying documents which relate to a yes response.

If you have any questions, please do not hesitate to contact the undersigned PSU member at (856) 453-0486. Thank you for your anticipated cooperation in this matter.

Respectfully yours,

PSU member