The Denver District Attorney's Brady Committee and Credibility Disclosure Notifications Procedures

January 1, 2022

SCOPE AND PURPOSE

The Denver District Attorney's Office (District Attorney) is committed to avoiding unjust prosecutions and convictions. The District Attorney recognizes its obligations under Brady vs. Maryland, 373 U.S. 83 (1963), Rule 16 of the Colorado Rules of Criminal Procedure, and the Colorado Rules of Professional Conduct. The purpose of this policy is to memorialize how the District Attorney provides access to information that tends to negate a defendant's guilt.

A prosecutor's duties to disclose are broader than Brady and may include information that is not actually exculpatory, or actually material to guilt or innocence, or actually admissible under the rules of evidence. The District Attorney discovers any relevant and non-privileged information in its possession. Any questions of discoverability are decided in favor of disclosure. There may be instances where information is discovered but we argue against its admissibility. The District Attorney proactively requires law enforcement agencies provide the office with potential Brady information.

This document is not a discovery policy. It does not provide, nor is it intended to be a substitute for, legal advice or research. Individual prosecutors must conduct their own research. Nothing in this document grants any rights or privileges to any person, nor does it impose any obligations upon agencies within the City and County of Denver. This document is intended to establish procedures and to provide internal guidance for complying with our legal and ethical obligations as applied to our staff and agencies on our cases.

APPLICABLE LEGAL AUTHORITY

Rule 16 of the Colorado Rules of Criminal Procedure and the Due Process Clause of the U.S. Constitution require a prosecution attorney to disclose to the defense "any material or information within his or her possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefore." This is more commonly known as "Brady material" in reference to Brady v. Maryland, *supra*.

Brady material includes information in the possession of partner law enforcement agencies, including the Denver Police department, that is deemed constructively in possession of the District

Attorney. People v. Lucero, 623 P.2d 424 (Colo. App. 1980); Rule 16 Part I(b)(4). Brady material also includes information bearing on a prosecution witness's credibility. Giglio v. United States, 405 U.S. 150 (1972); People v. District Court, 793 P. 2d 163 (Colo. 1990).

DISTRICT ATTORNEY'S OFFICE BRADY COMMITTEE

The District Attorney Brady Committee's (DABC) task is to implement practical methods to evaluate questions about the District Attorney's legal and ethical disclosure obligations. The DABC consists of a several members of the office including the office custodian of records, the intake unit supervisor, at least one chief deputy district attorney, at least one deputy district attorney, and other members of the District Attorney's Office. The DABC is chaired by an Assistant District Attorney. When necessary, a quorum shall consist of three or more members including at least one attorney; a majority vote of those present shall determine a given issue. The DABC will keep a record of decisions made pursuant to this policy. Records related to incidents which result in an agency employee being placed on the Brady list should be kept in a database that includes a means of identifying the incident and a means by which material related to a particular incident may be requested from the District Attorney. One member of the DABC will act as the Secretary for the group for the purpose of keeping these records. These records are criminal justice records under the Colorado Criminal Justice Records Act, C.R.S. § 24-72-302(4) and are work product prepared for the District Attorney.

The DABC will review these procedures and guidance 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).

TRAINING

Prosecutors regularly should receive training with respect to their ethical and other obligations to discover exculpatory material, both at the outset of employment and periodically thereafter. The DABC is responsible for these trainings. The content of these training programs should be updated as needed to reflect recent case law, ethical opinions, new technology and research, as well as to address any areas of identified improvement.

ADVICE ON DISCLOSURE OBLIGATIONS

The DABC strives to be a valuable source of knowledge and advice to deputies regarding a prosecutor's disclosure obligations. While deputies are encouraged to resolve most questions of discoverability in favor of disclosure – "when in doubt, send it out" – from time-to-time deputies and other team members are presented with novel or unique situations where one's obligations are unclear. In these situations, deputies are encouraged to contact individual DABC members or the committee as a whole for advice. Depending on the situation, the DABC may meet as a group to consider the issue. A record of these discussions will not be made.

IF POTENTIAL BRADY MATERIAL IS DISCOVERED DURING TRIAL OR UNDER TIME CONSTRAINTS

In some circumstances there may not be sufficient time to consult with the DABC and comply with obligations for timely disclosure. In these circumstances, such as during trial, the deputy district attorney should consult their supervising chief or a member of the DABC to determine an appropriate action. When time permits, the formal procedure should be utilized. A prosecutor's duties to disclose are broader than Brady and may include information that is not actually exculpatory, material, or admissible. The District Attorney generally resolves any questions of discoverability in favor of disclosure.

LAW ENFORCEMENT AGENCY EMPLOYEE CREDIBILITY DISCLOSURE NOTIFICATION PROCEDURE

Definitions
The below terms shall have the following meaning:

"**Credibility Disclosure Notification**" means the notification described in C.R.S. §16-2.5-502(2)(c).

"**Law Enforcement Agency**" means a state or local agency that employs peace officers.

"**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.

"Sustained finding" means the subject agency employee's actions were found, by a preponderance of the evidence, to have been in violation of the law enforcement agency's policy, procedure, rule, regulation, or directive in question.[1]

"**Agency employee**" means an employee of a law enforcement agency, both peace officers and civilians, whose duties could reasonably include testimony in a court of law.[2]

[1] This definition is consistent with the Denver Police Department definition of "sustained finding" which can be found in the Denver Police Department Discipline Handbook. It is slightly different from the statewide model for peace officer credibility disclosure notifications which defines "sustained finding" as "a final determination by a law enforcement agency, following a law enforcement agency's administrative procedures for investigating and reviewing alleged misconduct by a peace officer on the merits." The difference is that our definition requires a finding of a violation by a preponderance of the evidence for a "final determination" to be "sustained."
[2] Currently the Denver Police Department, provides credibility disclosure notifications for peace officers only. It is the position of the District Attorney that credibility disclosure notifications should include any agency employee who could reasonably testify in court. The District Attorney and the City Attorney's Office are in discussions to determine how to accomplish notifications for civilian personnel who could reasonably testify in court.

Procedures
Pursuant to C.R.S. § 24-33.5-114(4),

(a) A state or local law enforcement agency shall notify the local district attorney whenever the agency determines there is a sustained finding that any peace officer of the agency has made a knowing misrepresentation:

(I) in any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to the peace officer or the peace officer's employment history; or

(II) during the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct as described in C.R.S. §18-8-404 or 18-8-405; or excessive use of force, regardless of whether the alleged criminal conduct, official misconduct, or excessive use of force occurred while the peace officer was on duty, off duty, or acting pursuant to a service contract to which the peace officer's employing agency is a party.

This notice must be provided to the District Attorney not more than seven (7) days after the agency determines there is a sustained finding that a peace officer of the agency has made a knowing misrepresentation as described above. C.R.S. § 24-33.5-114(4)(b).

In addition, C.R.S. § 16-2.5-502 sets forth procedures for law enforcement agencies to notify the District Attorney not only of sustained findings of relevant misconduct, but also of pending investigations into allegations of such misconduct. Pursuant to C.R.S. § 16-2.5-502(2)(c) the District Attorney requires that partner law enforcement agencies provide written notification:

1. Of any sustained finding where an agency employee:

    a. Knowingly made an untruthful statement concerning a material fact;

    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;

    d. Committed any offense involving theft, bribery, or destroying or altering reports or records;

    e. Engaged in conduct prohibited by law;

    f. Has been convicted of or charged with any crime;

    g. Violated any policy of the law enforcement agency regarding dishonesty.

2. When an agency employee is under a criminal or administrative investigation that if sustained, would require disclosure under Section (1) immediately above. The law enforcement agency shall promptly notify the district attorney's office once the law

enforcement agency has completed the agency's administrative process for investigating and evaluating the allegations on the merits.

3. That a new hire or current employee has a criminal conviction for a felony; a theft-related offense; an offense involving false reporting, bias, or deceptive acts; or a criminal offense for which the POST board may deny certification (as set forth in C.R.S. § 24-31-305).

A law enforcement agency shall include the following information in the credibility disclosure notification to be provided in writing to the district attorney's office:

1. The agency employee's name;

2. The name of the law enforcement agency that employs or employed the agency employee at the time of the sustained findings or at the time of the criminal or administrative investigation;

3. The following statement: "This notification is to inform you that there is information in the law enforcement agency's possession regarding [name of agency employee] that may affect the employee's credibility in court."

4. Information identifying the basis for the credibility disclosure notification, including whether the notification is based on a sustained finding under C.R.S. § 16-2.5-502(2)(c)(I) or whether the notification relates to a pending criminal or administrative investigation under C.R.S. § 16-2.5-502(2)(c)(II).

5. A case number and jurisdiction or other means of identifying how material related to the conviction, sustained finding, or pending investigation may be requested from the agency or other authority.

Upon receipt of such written notification, the District Attorney will add the agency employee's name to a "Brady list" (sometimes referred to as the "asterisk" list). No additional review by the District Attorney is required.

When a Brady list employee is a witness in one of our cases, the District Attorney will place a letter in the case discovery folder, informing the defendant of potential Brady material in the witness's personnel file.

The letter placed in the case discovery folder referencing the law enforcement witness will include the agency's internal case number or some other method to identify information relevant to the administrative action or finding. This case number will provide defendants an opportunity to subpoena the relevant information directly from the agency.

Brady Notification Process With "Action"

The process for Brady notification under "Action", the District Attorney's case management system is as follows

For newly filed felony cases

- As the Intake unit processes pending felony cases, Intake personnel will be notified through a pop up that there is Brady material associated with the case.
- Upon seeing this notification, Intake will notify the Legal Administrator email group that a witness on the case has a Brady notification.
- The appropriate unit supervisor will generate an endorsement alert letter in Action and include the Internal Affairs case number (or other case identifying information) from the "Brady Officers" spreadsheet in the Brady folder on the G drive. That letter is then placed into the discovery folder in Action to be produced with the initial discovery.

For newly filed misdemeanor cases and units which conduct their own intake (Juvenile and ECU Investigations/Grand Jury/BHU)

- The unit personnel assigned to intake will be notified through a pop up that there is Brady material associated with the case. Upon seeing this notification, the unit personnel will generate an endorsement alert letter in Action and include the Internal Affairs case number (or other case identifying information) from the "Brady Officers" spreadsheet in the Brady folder in the G drive. That letter is then placed into the discovery folder in Action to be produced with the initial discovery.

For new Brady notifications in filed cases

- The Intake Supervisor receives notification of new Brady material from the local law enforcement or government agency (most usually from the Denver Police Department or Denver Sheriff's Department).
- Upon receipt of this notification, the Intake Supervisor will check the box for Brady material for that officer in the officer maintenance table in Action.
- Upon receipt of this notification, the Intake Supervisor will update the "Brady Officers" spreadsheet on the G drive.
- Upon receipt of this notification, the Intake Supervisor will request a report from CDAC for all of the open cases in which the witness is endorsed.
- Upon receipt of the report from CDAC, the Intake Supervisor will email the report to all deputies and supervisors, noting the officer's name, badge number, agency case number (IAB number), the allegation, and whether the allegation is pending or sustained.
- The supervisors will then generate an endorsement alert letter in Action in each case the witness is endorsed, including the Internal Affairs case number (or other case identifying information). That letter is then placed into the discovery folder in Action, and the supervisor tasks the assigned secretary to discover the letter through ediscovery.

Providing this notice gives defendants and their lawyers the opportunity to request the agency records relevant to the witness.

However, this information is not necessarily admissible. Law enforcement internal affairs and

personnel records are confidential by nature, and officers have a recognized privacy right in these files. Martinelli v. District Court, 612 P.2d 1083 (Colo. 1980). Prior to admission in court, a judge should conduct an *in camera* review of the material under Martinelli v. District Court, 612 P.2d 1083 (Colo. 1980) to determine whether the information is admissible. If the custodian of records or counsel for the agency does not request an *in camera* review the assigned deputy district attorney should. If the information is not admissible under the Rules of Evidence deputies should object to its admission. Thus, the fact that a recurring government witness has been added to the Brady list is not a determination by the District Attorney as to a person's future viability as a witness, as to his or her reputation, or as to the person's ability to serve in his or her current capacity.

The District Attorney should be notified promptly whenever new or additional evidence is discovered regarding the reported misconduct or if the sustained finding is removed. In general, dismissals of an allegation obtained through recognized due process procedures will result in the officer being removed from the list. The District Attorney reserves the right to keep or remove the officer from the list as necessary to comply with our Brady obligations. The decision to add or remove an agency employee from the Brady list is left to the sound discretion of the District Attorney. The DABC may be utilized when addressing these questions.

If there is a pending criminal case against a defendant and a law enforcement agency initiates a concurrent internal administrative investigation arising from the investigation of the criminal case, any non-Garrity[3] materials obtained as part of the administrative investigation which are potentially relevant to the criminal case, and otherwise not disclosed, shall be made a part of the concurrent criminal case so that discovery of those materials can be made to the defendant. Compliance with this section should, at a minimum, include filing a supplemental report in the criminal case indicating that additional witness statements potentially material and otherwise not disclosed were obtained as part of an internal administrative investigation and any recordings of those statements are being maintained as part of the law enforcement agency's internal administrative file. All *exculpatory* materials relevant to the concurrent criminal case must be provided to the District Attorney, even if the materials were obtained as a result of a Garrity advisement.

On an annual basis, written notification will be sent to partner law enforcement agencies requesting that they provide the District Attorney with written notification of the above potential Brady information located in personnel files. This request will explicitly request that the law enforcement agency not send the underlying documents. See Appendix A (sample letter regarding procedures for law enforcement agency credibility disclosure notifications).

[3] In Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967), the Supreme Court held that when an employee is faced with the choice between forfeiting his job or incriminating himself, his decision to make a statement is not born of "free and rational choice." *Id.* at 497. Thus, any statements made under such circumstances would be compelled and, under the Fifth Amendment, could not be used in a criminal proceeding against the employee. The Fifth Amendment privilege against self-incrimination as articulated in Garrity, often called "Garrity immunity," differs from an affirmative grant of use immunity by the state. Garrity immunity is a self-executing invocation of the Fifth Amendment privilege against self-incrimination that is triggered by a public employer's actions. When a public employee is unconstitutionally coerced into making a statement under threat of job loss, a court must intervene and grant what amounts to use immunity in order to prevent the person's statements from being used against him in a criminal proceeding in violation of the Fifth Amendment. Hopp & Flesch, UC v. Backstreet, 123 P.3d 1176 (Colo. 2005).

DABC INDEPENDENT REVIEW INITIATION – LIMITED CIRCUMSTANCES

In most instances, a government agency will investigate and evaluate conduct of its own officers and employees. It is presumed that this process affords officers and employees due process and the ability to contest any potential findings prior to transmitting them to the District Attorney.

In some instances, alleged misconduct by witnesses employed by a government agency ("government witness") occurs in the presence of, or is discovered by, District Attorney deputies or other team members. This type of conduct should not be confused with exculpatory information related to a specific case, even if it relates to a government witness's alleged misconduct. Exculpatory information related to a specific case should be discovered in the case ***immediately***. Any questions of discoverability are decided in favor of disclosure. Deputies are again reminded that they have an ethical obligation to discover exculpatory information.

In instances where the alleged misconduct by a government witness occurs in the presence of or is discovered by District Attorney deputies or other team members, the alleged misconduct should be brought to the attention of the Assistant District Attorney who chairs the DABC. A brief description of the factual circumstance should be provided. The Assistant District Attorney who chairs the DABC will make an initial determination as to whether to forward the alleged misconduct to the government agency and request that it begin an investigation.[4] The DABC may be consulted on this question.

If an investigation is requested but the government agency does not open an investigation into the potential misconduct, or if agency does not sustain the allegations referred by the DABC, or if circumstances exist making such a request impracticable or inadvisable, the following steps should be taken to ensure a fair and proper procedure for the government witness:

1. The relevant deputy district attorney should prepare a memorandum summarizing the alleged misconduct. If there is no assigned deputy related to the incident giving rise to alleged misconduct, a supervising chief deputy should prepare the memorandum. The memorandum should outline the facts without drawing conclusions or speculating. Related material may also be included with the memorandum.

2. The memorandum and all related material will be presented to the DABC by the attorney who prepared the memorandum. The materials considered by the DABC will be kept in a

[4]There are very limited instances when a sitting court makes an explicit judicial finding, based upon the evidence, that a recurring governmental witness has been intentionally, deliberately, and materially dishonest with the court. In such limited circumstances, the DABC may add the witness to the Brady list without requesting further investigation by the agency. The DABC will notify the government agency of such a decision. Note that this is distinguishable from a court simply finding that another witness' version of the facts is more accurate or correct than the government witness. Mere credibility determinations will, in general, not be subject to a DABC finding absent evidence of intentional, deliberate, and material dishonesty.

secure electronic database. The DABC may request additional information or conduct an investigation.

3. During presentation of the memorandum, the DABC will consider whether, if the allegation is true, it constitutes information subject to disclosure pursuant to Brady. If the answer is no, the inquiry is finished. If the answer is yes, the DABC review will continue.

4. The DABC will then consider whether it is convinced by a preponderance of the evidence that the allegation is true. If the answer is no, the inquiry is finished. If the answer is yes, the DABC will add the government witness to the Brady list and notify the agency employee and employing agency. See Appendix B (Sample notification of credibility disclosure to agency employee).

5. The employing agency or government witness may submit a response, with additional evidence they would like the DABC to consider, in writing within 20 days of the notification letter. If a response is received, the DABC will review the additional material, which will be included as a part of the DABC's record. The DABC will again consider whether, if the allegation is true, it constitutes information subject to disclosure pursuant to Brady. The DABC also will consider whether it is convinced by a preponderance of the evidence that the allegation is true. If the DABC reaches a different conclusion on either of these questions, the government witness will be removed from the Brady list.

If new evidence comes to light after the above process, the employing agency or government witness may send that evidence to the DABC and ask it to reconsider. Additionally, the DABC may reconsider a witness' placement on the Brady list based upon court rulings that help define or clarify the issue. The DABC may modify this procedure when necessary.

The District Attorney reserves the right to deviate from this procedure when it is in the interest of justice.

REMOVAL FROM BRADY LIST

Consistent with C.R.S. § 16-2.5-502 and the Peace Officer Credibility Disclosure Notifications Model Policy, the District Attorney 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 pursuant to Section (III)(B), 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(s) remove the credibility disclosure notification from the district attorney's records; *provided that* the District Attorney will not remove the credibility disclosure notification if the District Attorney determines that doing so would violate the District Attorney's disclosure obligations under Brady, Giglio, Kyles, and their progeny, or under the Colorado rules of criminal procedure.

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.

Appendix A (sample letter regarding procedures for law enforcement agency credibility disclosure notifications)

Beth McCann
District Attorney
Second Judicial District

201 W. Colfax Ave. Dept. 801
Denver, CO 80202
720-913-9000
Beth.McCann@denverda.org

DATE, 2022

NAME
TITLE
AGENCY NAME
ADDRESS
CITY, CO ZIP

RE: Procedures for Law Enforcement Agency Credibility Disclosure Notifications

Dear Chief NAME,

As you may know, Rule 16 of the Colorado Rules of Criminal Procedure and the Due Process Clause of the U.S. Constitution require a prosecution attorney to disclose to the defense "any material or information within his or her possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefore." This is also commonly known as exculpatory or "Brady material" in reference to a United States Supreme Court case called Brady v. Maryland, 373 U.S. 83 (1963).

Brady material includes information in the possession of partner law enforcement agencies, including your agency. This information is deemed constructively in possession of the prosecuting attorney. People v. Lucero, 623 P.2d 424 (Colo. App. 1980); Rule 16 Part I(b)(4). Brady material also includes information bearing on a prosecution witness's credibility. Giglio v. United States, 405 U.S. 150 (1972); People v. District Court, 793 P. 2d 163 (Colo. 1990).

In order to provide notice of potentially exculpatory information in internal affairs or personnel files, the District Attorney must rely on notification from partner law enforcement agencies such as yours. As such, the District Attorney requires that law enforcement agencies provide notification of exculpatory material involving agency employees.* Any credibility disclosure notification should not include the underlying internal affairs and personnel records. Transmittal of those records should only occur upon specific request by the Denver District Attorney or by a court order.

Procedures for Law Enforcement Agency Credibility Disclosure Notifications

Pursuant to C.R.S. § 24-33.5-114(4) and C.R.S. § 16-2.5-502 the Denver District Attorney requests that your agency transmit credibility disclosure notifications as provided below.

* For the purpose of this request, "agency employee" means an employee of a law enforcement agency, both peace officers and civilians, whose duties could reasonably include testimony in a court of law.

C.R.S. § 24-33.5-114(4)

Pursuant to C.R.S. § 24-33.5-114(4) sustained findings of a "knowing misrepresentation" must be disclosed to the District Attorney as follows:

(b) A state or local law enforcement agency shall notify the local district attorney whenever the agency determines there is a sustained finding that any peace officer of the agency has made a knowing misrepresentation:

(III) in any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to the peace officer or the peace officer's employment history; or

(IV) during the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct as described in C.R.S. 18-8-404 or 18-8-405; or excessive use of force, regardless of whether the alleged criminal conduct, official misconduct, or excessive use of force occurred while the peace officer was on duty, off duty, or acting pursuant to a service contract to which the peace officer's employing agency is a party.

This notice must be provided to the District Attorney not more than seven (7) days after the agency determines there is a sustained finding that a peace officer of the agency has made a knowing misrepresentation as described above. C.R.S. § 24-33.5-114(4)(b).

C.R.S. § 16-2.5-502

In addition, C.R.S. § 16-2.5-502 sets forth procedures for law enforcement agencies to notify the District Attorney not only of sustained findings of relevant misconduct, but also of pending investigations into allegations of such misconduct. Consistent with C.R.S. § 16-2.5-502 and the Peace Officer Credibility Disclosure Notifications Model Policy, the Denver District Attorney requires that partner law enforcement agencies provide written notification:

4. Of any sustained finding where an agency employee:

h. Knowingly made an untruthful statement concerning a material fact;

i. Demonstrated a bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class;

j. Tampered with or fabricated evidence;

k. Committed any offense involving theft, bribery, or destroying or altering reports or records;

l. Engaged in conduct prohibited by law;

m. Has been convicted of or charged with any crime;

n. Violated any policy of the law enforcement agency regarding dishonesty.

5. When an agency employee is under a criminal or administrative investigation that if sustained, would require disclosure under Section (1). The law enforcement agency shall promptly notify the district attorney's office once the law enforcement agency has completed the agency's administrative process for investigating and evaluating the allegations on the merits.

6. That a new hire or current employee has a criminal conviction for a felony; a theft-related offense; an offense involving false reporting, bias, or deceptive acts; or a criminal offense for which the POST board may deny certification (as set forth in C.R.S. § 24-31-305).

A law enforcement agency shall include the following information in the credibility disclosure notification to be provided in writing to the district attorney's office:

6. The agency employee's name;

7. The name of the law enforcement agency that employs or employed the agency employee at the time of the sustained findings or at the time of the criminal or administrative investigation;

8. The following statement: "This notification is to inform you that there is information in the law enforcement agency's possession regarding [name of agency employee] that may affect the employee's credibility in court."

9. Information identifying the basis for the credibility disclosure notification, including whether the notification is based on a sustained finding under C.R.S. § 16-2.5-502(2)(c)(I) or whether the notification relates to a pending criminal or administrative investigation under C.R.S. § 16-2.5-502(2)(c)(II).

10. A case number and jurisdiction or other means of identifying how material related to the conviction, sustained finding, or pending investigation may be requested from the agency or other authority.

Notification to Defendants

The District Attorney must make timely notifications of credibility disclosures to defendants. C.R.S. § 16-2.5-502(3)(d). Providing this notice gives defendants the opportunity to request agency records relevant to the witness. Prior to admission in court, a judge should conduct an *in camera* review of the material under Martinelli v. District Court, 612 P.2d 1083 (Colo. 1980) to determine whether the information is admissible. The fact the Denver District Attorney has made a notification to a defendant is not a determination by the Denver District Attorney as to an agency employee's future viability as a witness, the person's reputation, or the person's ability to serve in

his or her current capacity.

Thank you for your continued commitment to an effective, transparent and just criminal justice system.

Sincerely,

Zach McCabe
Assistant District Attorney
Denver District Attorney's Office

CC:

Appendix B (Sample notification letters to employing agency)

Beth McCann
District Attorney
Second Judicial District

201 W. Colfax Ave. Dept. 801
Denver, CO 80202
720-913-9000
Beth.McCann@denverda.org

DATE XX, XXXX
NAME

RE: Notification of Credibility Disclosure

Dear,

The Denver District Attorney, through the Denver District Attorney's Brady Committee (DABC) has determined that information related to you warrants a credibility disclosure pursuant to Brady vs. Maryland, 373 U.S. 83 (1963), Rule 16 of the Colorado Rules of Criminal Procedure, and the Colorado Rules of Professional Conduct.

Specifically, [summarize the information giving rise to the need to make a credibility disclosure].

You or your employing agency may submit a response, with any evidence you would like the DABC to consider, in writing within 20 days of this notification. You may send that information to myself. The DABC will review the additional material and again consider whether, the information is subject to disclosure pursuant to Brady.

If the DABC again concludes that the information is subject to disclosure, the District Attorney must provide notice of this information to defendants. Providing this notice gives defendants the opportunity to request agency records relevant to this information. Prior to admission in court, a judge should conduct an *in camera* review of the material under Martinelli v. District Court, 612 P.2d 1083 (Colo. 1980) to determine whether the information is admissible.

Consistent with C.R.S. § 16-2.5-502 and the Peace Officer Credibility Disclosure Notifications Model Policy, the District Attorney shall remove credibility disclosure notification records from the district attorney's records under certain circumstances including:

- 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.

- When a district attorney receives a court order directing the district attorney to remove the credibility notification records.

Sincerely,

Zach McCabe
Assistant District Attorney
Denver District Attorney's Office

CC: