

RESOLUTION 06-06-2018

DIGEST

Discovery: Open File Rule

Amends Penal Code section 1054.1 to allow the defense attorney to review the factual portion of the prosecution's file.

STATEMENT OF REASONS

The Problem: Discovery in criminal cases is governed by two bodies of law, State law enacted by voter initiative in 1990, and Federal Due process law as spelled out in the United States Supreme Court cases of *Brady v. Maryland* (1963) 373 U.S. 83 and *Kyles v Whitley*, (1995) 514 U.S. 419.

But these bodies of law often omit disclosure of evidence which will exculpate the accused. Sometimes the failure to disclose evidence is deliberate on the part of the prosecutor. An example is the case of Benjamin Field, in Santa Clara County. We genuinely hope and believe this is a rare exception.

More often, the prosecutor fails to recognize the exculpatory value of information in his file. This is understandable. The prosecutor looks at his file from the point of view which will help his case.

Many wrongful convictions have been overturned upon the defense learning of exculpatory evidence after the fact.

The Solution: The amendment provides for an open file rule. An open file rule requires the prosecutor to permit the defense to review the factual portion of the entire prosecutor's file. It comports completely with the prosecution's duties of disclosure to the defendant. It makes the prosecutor's function easier; no longer must the prosecutor decide which evidence is relevant, which evidence is material and which evidence must be disclosed.

Disclose it all.

The system works. Two conservative District Attorneys' offices have had open file rules for at least thirty years. They are San Mateo County and San Diego County.

This amendment is based on a North Carolina Statute: General Statute § 15A - 903 (2011).

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code Section 1054.1 to read as follows:

- 1 § 1054.1
- 2 The prosecuting attorney shall disclose to the defendant or his or her attorney all of the

3 following materials and information: ~~if it is the possession of the prosecuting attorney or if the~~
4 ~~prosecuting attorney knows it to be in the possession of the investigating agencies.~~

5 (a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.

6 ~~(b) Statements of all defendants.~~

7 (b) The complete file of all law enforcement agencies, investigatory agencies, and
8 prosecutor's offices of the crimes charged against the accused, including but not limited to the
9 following:

10 The defendant's statements, the codefendant's statements, witness statements,
11 investigating officer's notes, results of tests and examinations, or any other matter or evidence
12 obtained during the investigation of the offenses alleged to have been committed by the
13 defendant.

14 (c) All relevant real evidence seized or obtained as a part of the investigation of the
15 offenses charged.

16 (d) The complete criminal record of the defendant and of any witness, including records
17 of convictions, acquittals, charges dismissed, charges not filed and police reports.

18 ~~(e) Any exculpatory evidence.~~

19 (e) All exculpatory evidence and all evidence of mitigation.

20 (f) Relevant written or recorded statements of witnesses or reports of the statements of
21 witnesses ~~whom the prosecutor intends to call at the trial~~, including any reports or statements of
22 experts made in conjunction with the case, including the results of physical or mental
23 examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer
24 in evidence at the trial.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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