

RESOLUTION 06-07-2018

DIGEST

Discovery: Disclosure by Prosecution Begins Upon Arraignment

Amends Penal Code section 1054.7 to provide that the disclosure of discovery by the prosecution to the defense begins upon arraignment of the defendant.

STATEMENT OF REASONS

The Problem: Current Penal Code Section 1054.7 states that disclosures pursuant to Penal Code Section 1054.1 are to be made thirty days before trial. But this just isn't the law. *People v. Gutierrez*, (2013) 214 Cal.App. 4th 347, and many other cases state that the prosecutor's duties to disclose *Brady* material begin at arraignment and are continuing.

The Solution: The resolution is a companion to another resolution submitted this year which amends the discovery requirements of the prosecution under Penal Code section 1054.1. It means that the prosecutor's duties under the new open file rule commence at arraignment. This resolution, in combination with the companion resolution regarding Penal Code section 1054.1 will implement an open file rule and help to insure justice.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1054.7 to read as follows:

- 1 § 1054.7
- 2 The disclosures required under this chapter shall be made ~~at least 30 days prior to the trial~~
- 3 ~~by the prosecution upon arraignment. The duty of disclosure by the prosecution is a continuing~~
- 4 ~~one.~~
- 5 The disclosures required under this chapter by defendant shall be made at least 30 days
- 6 before trial.
- 7 ~~Unless good cause is shown why a disclosure should be denied, restricted, or deferred. If~~
- 8 ~~the material and information becomes known to, or comes into the possession of, a party within~~
- 9 ~~30 days before trial, disclosure shall be made immediately, unless good cause is shown why a~~
- 10 ~~disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible~~
- 11 ~~danger to the safety of a victim or witness, possible loss of destruction of evidence, or possible~~
- 12 ~~compromise of other investigations by law enforcement.~~
- 13 Upon the request of any party, the court may permit a showing of good cause for the
- 14 denial or regulation of disclosures, or any portion of that showing, to be made in camera. A
- 15 verbatim record shall be made of any such proceeding. If the court enters an order granting relief
- 16 following a showing in camera, the entire record of the showing shall be sealed and preserved in
- 17 the records of the court, and shall be made available to an appellate court in the event of an
- 18 appeal or writ. In its discretion, the trial court may after trial and conviction, unseal any
- 19 previously sealed matter.

(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.

AUTHOR: David Michael Bigeleisen, 1155 Pine Street, San Francisco, CA 94109, 415-957-1717, david@bigeleisenlaw.com

RESPONSIBLE FLOOR DELEGATE: David Michael Bigeleisen

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1054.7 to provide that the disclosure of discovery by the prosecution to the defense begins upon arraignment of the defendant. This resolution should be approved in principle because it brings the current statute in line with long established United States constitutional requirements established by *Brady v. Maryland* (1963) 373 U.S. 83.

Under federal law, the prosecution is required to disclose exculpatory evidence to the defense. California places a continuing obligation on the prosecution to disclose exculpatory information to the defense which begins at arraignment and continues until the conclusion of the matter. (*People v. Gutierrez*, (2013) 214 Cal.App.4th 347.) The proposed amendment brings California in line with United States constitutional requirements and current case law.

This resolution is related to Resolution 06-06-2018.