



CHESTER COUNTY DISTRICT ATTORNEY GIGLIO PROTOCOLS FOR LAW ENFORCEMENT

I. Introduction

The following protocol addresses the handling of potential impeachment information for law enforcement officers in Chester County, which is called “Giglio material” or “Giglio issues.”

The criminal justice system relies upon the integrity of law enforcement officers. Chester County law enforcement has a long and proud history of upholding the highest standards of integrity, and intends to maintain those standards.

In addressing Giglio issues, certain constitutional mandates govern prosecutors. The Commonwealth must disclose all potential exculpatory material to the defense under Brady v. Maryland, 373 U.S. 83 (1963). The Brady rule also applies to any impeachment evidence under Giglio v. United States, 405 U.S. 150 (1972). Exculpatory and impeachment evidence is material relevant to a finding of guilt – and thus must be disclosed – where there is a reasonable probability that the evidence would result in acquittal. United States v. Bagley, 475 U.S. 667 (1985). Regarding impeachment materials associated with a witness, a prosecutor has the

discretion not to call a witness if the prosecutor deems the witness to be lacking in credibility. Commonwealth v. Palermo, 368 Pa. 28 (1951). All of these rules apply equally to civilian and law enforcement witnesses. Because the tracking and disclosure of Giglio material is constitutionally required, Giglio protocols must be followed by prosecutors.

Based on these constitutional mandates and to uphold the integrity of the criminal justice process, the Chester County District Attorney's Office (the "DAO") has worked with Chester County law enforcement to develop the following protocols for dealing with Giglio issues in Chester County. This protocol is not a disciplinary measure for police departments. The determination, tracking, and disclosure of constitutionally required Giglio material are separate from any disciplinary measures taken by police departments.

II. Protocols

A. Reporting of Giglio Issues

1. Law enforcement agencies: Each law enforcement agency in Chester County shall report to the DAO if they discover any potential Giglio issues for a police officer. The agencies should have an internal policy to address Giglio issues. Such reports should be made to the First Assistant District Attorney.
2. Potential Giglio issues may also be directly observed by DAO prosecutors and/or detectives. DAO prosecutors and detectives shall report such issues to the First Assistant District Attorney.

B. Giglio Material

Giglio material shall be any impeachment material as defined by Giglio and related cases, including but not limited to:

1. Dishonesty in the line of duty;
2. Misconduct that is relevant to a prosecution or investigation and negatively affects the integrity of a prosecution or investigation;
3. Pending criminal charges or a conviction that would result in loss of law enforcement privileges in Pennsylvania; and
4. Bias or prejudice toward any constitutionally protected group.

C. Review by DAO

The DAO will review any potential Giglio material. Depending on the nature of the information, this may involve an independent investigation by the DAO. The officer who is being reviewed will be notified, absent exceptional circumstances, and may be requested to submit to an interview, depending on the nature of the potential Giglio material. The officer's command supervisors (*e.g.*, Chief and/or Captain) also will be notified.

D. Results of Giglio Review

After the DAO reviews the potential Giglio material, the DAO will make a determination regarding whether the information qualifies as Giglio material.

If the material does not constitute Giglio material, the investigation will be closed. If the material constitutes Giglio material, the DAO will use its discretion to exercise two possible options.

First, where there is an affirmative finding of Giglio material regarding an officer, that officer may be placed on the DAO "Do Not Use List." This applies particularly to on-duty findings of dishonesty. An officer on the Do Not Use List will not be called by the DAO as a witness in any case and will not be permitted to be the affiant on any search warrant or criminal complaint prosecuted by the DAO. In the DAO's discretion and judgment, allowing such officers to testify would irrevocably taint the criminal justice process, leading to a loss of public trust, potential acquittals of guilty defendants, and endangering the safety and welfare of victims.

Second, in a limited number of instances where there is an affirmative finding of Giglio material regarding an officer, that officer may be placed on the DAO "Use With Caution List." An officer on the Use With Caution List will be reviewed on a case-by-case basis to determine if the Giglio material applicable to that officer will still allow the officer to testify and/or be the affiant on search warrants or criminal complaints.

If an officer on either the Do Not Use List or Use With Caution List is called as a witness by either the prosecution or the defense, the DAO will disclose the Giglio material regarding that officer to the defense.

E. Notifications

Where the DAO finds that there is Giglio material regarding an officer, the DAO will notify in writing: (a) the officer; and (b) the officer's command supervisors (*e.g.*, Chief and/or Captain) so that the supervisors may take appropriate action regarding the officer's duties. The notification will include the status of the officer (*i.e.*, on the Do Not Use List or Use With Caution List) and the procedures for reconsideration (see below). Background checks of any prospective police employees should include inquiries on the application forms regarding potential Giglio issues or prior determinations of Giglio materials. Any follow-up questions may be directed to the First Assistant District Attorney.

F. Internal Affairs

Any conclusions reached by the DAO regarding Giglio issues are separate and distinct from the internal affairs decisions of a law enforcement agency employing an officer. To the extent an administrative proceeding is taking place regarding potential Giglio material for an officer, a final determination by the DAO normally will follow the full administrative review of the conduct in question, although the DAO may make interim determinations pending the final administrative review.

G. Reconsideration

1. Where the DAO notifies an officer that there has been an affirmative finding regarding Giglio material, that officer has thirty (30) days to request reconsideration by the District Attorney. The officer may make an oral or written presentation to the District Attorney. The officer may be accompanied by an attorney or FOP representative during that presentation.
2. Where an officer is on the Do Not Use List or Use With Caution List, that officer may request a review of his or her status once every two years.
3. The investigations regarding all officers on the Do Not Use List and Use With Caution List are maintained as ongoing investigations by the DAO as long as the officer is employed in any law enforcement capacity.