

MEMORANDUM OF UNDERSTANDING

INTRODUCTION

The United States Supreme Court has held that the due process clause of the Constitution requires prosecutors to disclose exculpatory evidence to criminal defendants. *Brady v. Maryland*, 373 U.S. 83 (1963). Exculpatory evidence includes information that tends to show that the defendant did not commit the crime, that someone else may have committed the crime, or that mitigates the defendant's liability for the crime. The United States Supreme Court has also held that, under the *Brady* rule, prosecutors are required to disclose evidence which impeaches the credibility of witnesses. *Giglio v. United States*, 405 U.S. 150 (1972). The *Giglio* rule applies to all witnesses, including law enforcement personnel.

Prosecutors have an affirmative duty to learn of any *Brady* evidence known to others involved in the criminal prosecution process, including law enforcement. The Medina Police Department (MPD), the Medina City Attorney and the Hennepin County Attorney have entered into this agreement to ensure the just and ethical prosecution of crimes and to comply with the requirements of *Brady* and *Giglio*. This agreement specifically addresses the identification and disclosure of potential impeachment evidence with regard to MPD personnel who may be witnesses in criminal trials.

PROTOCOL

1. The Police Chief will advise the Medina City Attorney and Hennepin County Attorney's Office of any administrative files with sustained findings (whether or not discipline was imposed) against any past or present Medina personnel. A finding is considered sustained if it has not been challenged within the time period in which to appeal it to an arbitrator, the Civil Service Commission or the Veteran's Preference Board. If a finding is appealed as outlined above, it is considered sustained upon the issuance of a written decision supporting the finding.
2. The Medina City Attorney and Hennepin County Attorney's Office will be given access to any such files to determine whether any *Brady* material is present. With regard to the Hennepin County Attorney's Office, this access will be provided to Marlene Senechal, Managing Attorney, Special Litigation Division (Marlene.Senechal@hennepin.us) and Alan Harris, Managing Attorney, Adult Prosecution Division (Alan.Harris@hennepin.us), or their designee.
3. The categories of *Brady* materials include:
 - a. False written statement, report, or other document;
 - b. Misconduct that indicates untruthfulness ;
 - c. Misconduct that indicates bias against any protected class;
 - d. Misconduct involving undisclosed or improper promises, offers, or inducements to witnesses or suspects;
 - e. Misconduct involving mishandling of evidence or property;

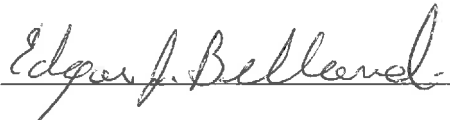
- f. Misconduct that involves the use of excessive force;
 - g. Criminal conviction (misdemeanor or above);
 - h. Misconduct that involves abuse of police authority;
 - i. Misconduct that involves the inappropriate or unauthorized use of government data;
 - j. Misconduct that reflects on credibility; and
 - k. Other conduct potentially discoverable under *Brady* not fitting into any of the above categories.
4. The Hennepin County Attorney's Office has established a secure database for use in accessing identified *Brady* materials. Access to the database is limited to the Chief Criminal Deputy and the managing attorneys of the criminal divisions of the office. The *Brady* materials themselves will be maintained exclusively by MPD and will not be stored within the Hennepin County Attorney's system.
5. Chief of Police will notify the Medina City Attorney and the Hennepin County Attorney's Office of any new administrative files with sustained findings. The Hennepin County Attorney's Office will then promptly review those files.
6. MPD will provide written notice to any Medina employee who has been determined to be the subject of *Brady* materials. If an employee elects to submit a written explanation of the conduct the Hennepin County Attorney's Office will review it and include it with any disclosures when appropriate.
7. The identification of a Medina employee as being the subject of *Brady* material is for the limited purpose of ensuring compliance with the prosecuting agency's discovery obligations. The identification is not, in and of itself, related to the employee's employment and will not be used by MPD for disciplinary purposes.
- a. The Hennepin County Attorney's Office has developed a system to ensure that when a prosecutor prepares a case for trial, the prosecutor will receive notification if any Medina personnel the prosecutor intends to call as a witness at trial has been identified in the *Brady* database. The Chief Criminal Deputy or a managing attorney of one of the criminal divisions will determine if information in regard to that witness must be disclosed to defense and, if so, the method of disclosure.

Chief of Police

City Attorney

Michael O. Freeman
Hennepin County Attorney
C2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

- f. Misconduct that involves the use of excessive force;
 - g. Criminal conviction (misdemeanor or above);
 - h. Misconduct that involves abuse of police authority;
 - i. Misconduct that involves the inappropriate or unauthorized use of government data;
 - j. Misconduct that reflects on credibility; and
 - k. Other conduct potentially discoverable under *Brady* not fitting into any of the above categories.
4. The Hennepin County Attorney's Office has established a secure database for use in accessing identified *Brady* materials. Access to the database is limited to the Chief Criminal Deputy and the managing attorneys of the criminal divisions of the office. The *Brady* materials themselves will be maintained exclusively by MPD and will not be stored within the Hennepin County Attorney's system.
5. Chief of Police will notify the Medina City Attorney and the Hennepin County Attorney's Office of any new administrative files with sustained findings. The Hennepin County Attorney's Office will then promptly review those files.
6. MPD will provide written notice to any Medina employee who has been determined to be the subject of *Brady* materials. If an employee elects to submit a written explanation of the conduct the Hennepin County Attorney's Office will review it and include it with any disclosures when appropriate.
7. The identification of a Medina employee as being the subject of *Brady* material is for the limited purpose of ensuring compliance with the prosecuting agency's discovery obligations. The identification is not, in and of itself, related to the employee's employment and will not be used by MPD for disciplinary purposes.
- a. The Hennepin County Attorney's Office has developed a system to ensure that when a prosecutor prepares a case for trial, the prosecutor will receive notification if any Medina personnel the prosecutor intends to call as a witness at trial has been identified in the *Brady* database. The Chief Criminal Deputy or a managing attorney of one of the criminal divisions will determine if information in regard to that witness must be disclosed to defense and, if so, the method of disclosure.



Chief of Police

City Attorney

Michael O. Freeman
Hennepin County Attorney
C2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

