

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

AMENDED GENERAL ORDER

(Due Process Protections Consistent with Super. Ct. Crim. R. 5(f))

Amended December 23, 2022

Effective December 23, 2022

WHEREAS, on October 21, 2020, the President signed into law the Due Process Protection Act, Public Law No. 116-182, which amended the Federal Rules of Criminal Procedure to add subsection (f) to Rule 5; and

WHEREAS, on March 22, 2022, the Superior Court Criminal Rules Advisory Committee voted to recommend amending Superior Court Rule of Criminal Procedure 5 consistent with Federal Rule of Criminal Procedure 5(f); and

WHEREAS, on April 22, 2022, the Superior Court Rules Committee approved the adoption of the proposed amendment to Superior Court Rule of Criminal Procedure 5 consistent with Federal Rule of Criminal Procedure 5(f); and

WHEREAS, on November 9, 2022, the Superior Court Board of Judges approved the adoption of the proposed amendment to Superior Court Rule of Criminal Procedure 5 consistent with Federal Rule of Criminal Procedure 5(f); and

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), on December 15, 2022, the District of Columbia Court of Appeals approved Superior Court Rule of Criminal Procedure 5(f) to the extent that it modifies the federal rules; and

WHEREAS, on December 22, 2022, the Chief Judge of the Superior Court issued Promulgation Order No. 22-15 amending Superior Court Rule of Criminal Procedure 5 by adding subsection (f) as follows:

(f) REMINDER OF PROSECUTORIAL OBLIGATION.

(1) *In General.* In all criminal proceedings, at the defendant's initial appearance, the judge or magistrate judge must issue a written order to the attorney for the government and defense counsel that confirms the disclosure obligation of the attorney for the government under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, and the possible consequences of violating such order under applicable law. At the first hearing after the defendant's initial appearance, the judge or magistrate judge must orally confirm the terms of the written order.

(2) *General Order.* The Chief Judge must issue a general order for use in accordance with Rule 5(f)(1).

WHEREAS, under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny both in the Supreme Court of the United States and the District of Columbia Court of Appeals, the government has a continuing obligation to disclose all information known to the government that is favorable to the defendant and material to the guilt or punishment of a defendant, including impeaching and exculpatory information; and

WHEREAS, under *United States v. Agurs*, 427 U.S. 97, 107 (1976), the duty to disclose *Brady* material exists even when there has been no request for the material from the defendant or their counsel; and

WHEREAS, under *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995), the attorney for the government has a duty to learn of any evidence favorable to the defendant known to others acting on the government's behalf in the case; and

WHEREAS, the government's obligation under *Brady* operates in conjunction with its obligations under Superior Court Rules of Criminal Procedure 5(f)(1) and 16; and

WHEREAS, under *Curry v. United States*, 658 A.2d 193, 197 (D.C. 1995) and *Edelen v. United States*, 627 A.2d 968, 970 (D.C. 1993), the government must make its *Brady* disclosures in a timely manner in order to allow the defense to use the material effectively in preparation and presentation of its case.

NOW, THEREFORE, it is hereby,

ORDERED, that the government shall disclose to the defendant in a timely manner, consistent with *Brady* and its progeny, all information known to the government that is favorable to the defendant and material on the issue of guilt or punishment; and it is further

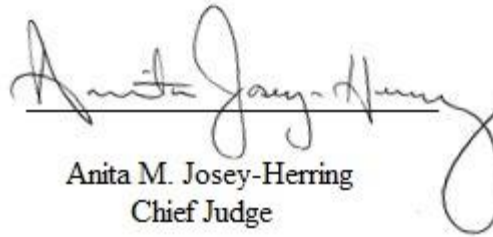
ORDERED, that in the event the government believes that a disclosure under this rule would compromise witness safety, victim rights, national security, a sensitive law-enforcement technique, or any other substantial government interest, it may apply to the Court for a modification of the requirements of this rule, which may include *in camera* review and/or withholding or subjecting to a protective order all or part of the information; and it is further

ORDERED, that this General Order does not relieve any party in this matter of any other discovery obligation, and this General Order does not enlarge or diminish the government's obligation to disclose information to a defendant under *Brady* as interpreted and applied by the Supreme Court of the United States and the D.C. Court of Appeals; and it is further

ORDERED that the consequences for violating obligations under *Brady* may, in the court's discretion, include, but are not limited to, ordering production of information, specifying the terms and conditions of production of information, granting a continuance, imposing sanctions such as an adverse jury instruction, exclusion of evidence, dismissing charges, and contempt of court.

SO ORDERED.

Date: December 23, 2022



Anita M. Josey-Herring
Chief Judge

Copies to:
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Magistrate Judges
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Clerk of the Court
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