

# **ETHICAL GUIDELINES FOR PROSECUTORS**



**2019**

## INTRODUCTION

Former Connecticut Supreme Court Chief Justice William Maltbie described Connecticut's prosecutors as being free "from the stress of politics and the vagaries of popular feeling" and observed that prosecutors have been "given [the] opportunity for the untrammelled exercise of independence in judgment and action." Chief Justice Maltbie observed, however, that "[w]ide powers have ... been vested in the state's attorneys, and with them has gone a high feeling of responsibility...."<sup>1</sup>

Our Supreme Court also repeatedly has recognized the special role that prosecutors play in our system of justice and the great responsibility with which they are vested:

"[The prosecutor] is not only an officer of the court, like every attorney, but is also a high public officer, representing the people of the State, who seek impartial justice for the guilty as much as the innocent. In discharging his most important duties, he deserves and receives in peculiar degree the support of the court and the respect of the citizens of the county.... His conduct and language in the trial of cases in which human life or liberty are at stake should be forceful, but fair, because he represents the public interest ...."<sup>2</sup>

Our criminal justice system stands at the intersection of two of this nation's most treasured ideals: the preservation of public safety and the protection of liberty. The primary responsibility of the prosecutor is to ensure that these cherished concepts are properly balanced every day, in every case. The prosecutor must promote respect for the rule of law, while at the same time ensuring that the enormous powers of the state do not trample our citizens' rights and liberties.

Moreover, the prosecutor must judiciously exercise that authority with respect, compassion and understanding for all who come before him or her. Some cases warrant an aggressive prosecution, with the full weight of the law being brought against the defendant. Others are better addressed by non-judicial

---

<sup>1</sup> Homer S. Cummings, *State vs Harold Israel*, 15 J.Am.Inst.Crim.L. & Criminology 406, 406 (May 1924 to Feb 1925).

<sup>2</sup> *State v. Rizzo*, 266 Conn. 171, 246-47 (2003).

sanctions and/or treatment of an offender's underlying circumstances. In either event, the prosecutor's decision must never be influenced by resentment or bias.

### **ETHICAL GUIDELINES FOR PROSECUTORS**

*"[T]he prosecutor, as a representative of the state, has a duty of fairness that exceeds that of other advocates. [A] prosecutor is not an ordinary advocate. His [or her] duty is to see that justice is done and to refrain from improper methods calculated to produce prejudice and wrongful decisions by the jury."* (Emphasis added; internal quotation marks omitted.) *State v. Copas*, 252 Conn. 318, 336 (2000).

The concept that a prosecutor is not just an advocate, but is also a public servant who is bound to seek justice, has its roots in Connecticut. In 1705, the colony of Connecticut, recognizing that crimes are not only wrongs inflicted against individuals but, also, are harmful to society as a whole, appointed the first public prosecutor in America, Richard Edwards, and vested in him the broad authority "to prosecute and implead in the lawe all criminall offenders, and to doe all other things necessary or convenient as an attorney to suppress vice and immorallitie."<sup>3</sup>

From the very beginning, the colony recognized that the grant of such broad power carried with it a responsibility to ensure that the power was used wisely. Accordingly, it required that the prosecutor be a sober and discreet person.

For more than three hundred years, Connecticut's prosecutors have taken seriously their roles as public servants and ministers of justice. They have obtained convictions and sought lengthy prison sentences when they were warranted and have exercised their discretion not to prosecute when the ends of justice would not be served by a conviction. In one particularly famous case, Fairfield County State's Attorney Homer Cummings, who would later become Attorney General of the United States, dropped murder charges against an individual named Harold Israel after his own extensive investigation led him to conclude that Israel did not commit the murder. In entering the nolle prosequi, State's Attorney Cummings told the

---

<sup>3</sup> *State v. Nardini*, 187 Conn. 109, 113 (1982), citing 4 Colonial Records, 468.

court that "it is just as important for a state's attorney to use the great powers of his office to protect the innocent as it is to convict the guilty."<sup>4</sup>

As an heir to Richard Edwards and Homer Cummings, you wield the same authority and bear the same responsibilities. The decisions you make on a daily basis, such as whether to charge someone with a crime, what crimes to charge, and what disposition to recommend, carry with them serious consequences that can affect not only the persons charged but, also, their families, victims, witnesses and society at large. It is incumbent on you, as a minister of justice, to exercise your power in accordance with the highest ethical standards.

This means that you must always seek the truth regardless of where it might lead, remembering that justice is served when the innocent are exonerated just as it is when the guilty are convicted. You must present your case fairly and ensure that the defendant's rights are protected. Finally, you must seek a resolution of the case that is consistent with the ends of justice. You must keep in mind that not every person who is arrested should be prosecuted and every person who is convicted need not go to jail.

The ethical rules that govern your behavior are set forth in the Division's Ethics Policy (the "Policy") which incorporates the Rules of Professional Conduct (the "Rules"). You must familiarize yourself with both the Policy and the Rules. Although not every mistake made by a prosecutor in applying these Rules can be fairly deemed to be an ethical violation, deliberate or reckless violations or willful ignorance of your obligations will be. These guidelines are intended to help you understand your obligations so that you can discharge your duties in accordance with the law. If you have any questions about the applicability of the Policy or Rules in any particular situation you can make an inquiry to the Division's Ethics Committee which will provide you with guidance.

The complete Rules of Professional Conduct and Commentary are set forth in the Connecticut Practice Book. Although the Rules are designed to cover a wide range of situations, most of the Rules can be distilled to a few common sense principles of fairness and professionalism.

---

<sup>4</sup> Homer S. Cummings, State vs Harold Israel, 15 J.Am.Inst.Crim.L. & Criminology, 415.

## **I. Rules of General Applicability**

### **Be Prepared**

A prosecutor must ensure that he or she has the requisite legal knowledge and skill to handle a case. Rule 1.1 (Competence). This means that the prosecutor must keep abreast of changes in the law and its practice, including relevant scientific and technological developments. The prosecutor's obligation to stay informed includes the duty to comply with all continuing legal education requirements. In Connecticut, newly appointed prosecutors, those holding the title of Deputy Assistant State's Attorney, must receive five days of training and all other prosecutors must receive two during the calendar year. General Statutes § 51-279c. The Connecticut Bar requires all attorneys to receive twelve hours of continuing legal education annually, two of which must be on legal ethics/professionalism. Practice Book § 2-27A(a). The Division provides a number of training opportunities throughout the year to assist prosecutors in meeting their obligations.

Although each prosecutor is responsible for assuring that he or she is capable of performing his or her duties, supervisors have an independent responsibility to ensure that attorneys working for them are qualified to handle the cases assigned. Rule 5.1(b). Accordingly, supervisors should take the skill level, legal knowledge, and experience of their prosecutors into consideration when assigning cases. They should also control the workload of the attorneys they supervise to ensure that each matter can be handled competently. Rule 1.3 (Diligence). Supervisors should ensure that prosecutors under their direction participate in appropriate training and education programs. NDAA National Prosecution Standards, Sec. 1-5.3(a) (3rd ed. 2010).

Finally, preparation also means that the prosecutor has inquired into and analyzed the facts and legal issues presented before taking action on any individual case. Rule 1.1 (Competence).

### **Be Diligent**

A prosecutor must act with commitment and dedication in advocating for the interests of the State of Connecticut. This does not mean, however, that the

prosecutor must seek a conviction, or the maximum possible sentence, in every case. Rather, a prosecutor's duty is to seek justice. A prosecutor should be on time, comply with deadlines, and must not do anything solely for the purpose of delay. Rules 1.3 (Diligence), 3.2 (Expediting Litigation), 4.4(a) (Respect for Rights of Third Persons).

### **Be Honest**

A prosecutor's integrity must never be compromised. To that end, a prosecutor must not knowingly make a false statement of fact or law to a court or tribunal, or to any other person with whom he or she interacts in the course of representing the state of Connecticut. Rules 3.3(a)(1) (Candor toward the Tribunal), 4.1(1) (Truthfulness in Statements to Others). If a prosecutor inadvertently makes a false statement to a tribunal, he or she is obligated to correct it. Rule 3.3(a)(1). In addition to accurately stating the law, a prosecutor has an affirmative duty to disclose to the tribunal legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to his or her position if it was not cited by opposing counsel. Rule 3.3(a)(2).

Because a prosecutor must always seek the truth, he or she may not offer evidence that the prosecutor knows is false. Similarly, if a prosecutor comes to learn of the falsity after the evidence has already been offered, he or she must take reasonable remedial measures, including, if necessary, disclosing the falsity to the tribunal. Rule 3.3(a)(3). The duty to correct a material falsehood continues until the defendant is discharged from custody or released from supervision, whichever comes earlier. In an ex parte proceeding, a prosecutor must inform the tribunal of all material facts known to the prosecutor that will enable the tribunal to make an informed decision, including facts that might be adverse to the prosecutor's position. Rule 3.3(d).

### **Do Not Reveal Confidential Information**

Rule 1.6(a) generally prohibits attorneys from disclosing information related to the "representation of a client unless the client gives informed consent." Although the rule is written with the private practitioner and client in mind, maintaining confidentiality is even more important for prosecutors who routinely have access to highly sensitive information. Careless or unauthorized disclosure of

that information could jeopardize investigations, ruin reputations and, in some cases, cost lives. Prosecutors should note that the confidentiality of investigative grand jury information is protected by statute, General Statutes § 54-47g, and that the unauthorized disclosure of wiretap information could result in criminal prosecution. See General Statutes § 54-41p.

### **Do Not Make Frivolous Arguments**

A prosecutor should not raise or contest a claim unless there is a basis in law and fact for doing so that is not frivolous, which may include a good faith argument for extension, modification or reversal of existing law. Rule 3.1. Similarly, in trial, a prosecutor should not allude to anything that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence. Rule 3.4.

### **Be Fair**

A prosecutor must not do anything solely for the purpose of embarrassing or burdening a defendant, a witness or any other person involved with a matter the prosecutor is handling. Rule 4.4(a) (Respect for Rights of Third Persons). As a minister of justice, a prosecutor must not: (1) unlawfully obstruct the defendant's access to evidence; (2) alter, conceal or destroy evidence or assist another in doing so; (3) falsify evidence; (4) counsel or assist a witness to testify falsely; or (5) offer an inducement to a witness that is not allowed by law. Rule 3.4 (Fairness to Opposing Party and Counsel). He or she should not make frivolous discovery requests and should make reasonably diligent efforts to comply with legal discovery requests from the defendant. Rule 3.4(4).

In dealing with witnesses, a prosecutor shall not advise a witness to decline to meet with or give information to the defense. The prosecutor, however, may advise a witness that he or she is not obligated to provide information to the defense and may inform the witness of the possible consequences if he or she chooses to do so. NDAA National Prosecution Standards, Sec. 2-10.2 (3rd ed. 2010).

The prosecutor must not try to improperly influence a judge or juror. He or she should avoid ex parte communications with a judge or the judge's staff

regarding the merits of a case before the court. Unless authorized to do so by law or court order, a prosecutor should not engage in any prohibited communications with a juror or prospective juror. A prosecutor may communicate with a juror after the conclusion of a case unless the court has prohibited such communication, such communication is prohibited by law, or the juror has made it known that he or she has no desire to talk to the prosecutor. In no event should the prosecutor try to coerce the juror to communicate if the juror does not wish to do so or misrepresent his or her position to persuade the juror to communicate. Rule 3.5 (Impartiality and Decorum). If, prior to judgment in a case, a prosecutor learns of conduct or discussion by a juror that violates the court's instructions the prosecutor must inform the court of the misconduct. Rule 3.3(e) (Candor toward the Tribunal).

### **Be Respectful**

As a representative of the State of Connecticut, a prosecutor should act with candor, good faith, and courtesy in all professional relations. This means that a prosecutor should treat everyone with whom he or she interacts, including judges, court personnel, jurors, law enforcement officials, victims, defendants, attorneys, members of the press, and the public at large, with respect. Prosecutors should be mindful of the peculiar interest each party has and the important role each plays in the criminal justice system. As to the court, a prosecutor may argue his or her case strenuously but must not engage in conduct intended to disrupt court proceedings. Rule 3.5(4).

### **Avoid Conflicts of Interest**

Because the prosecutor is a representative of the state and a minister of justice, it is important that his or her impartiality be beyond question. Accordingly, a prosecutor should recuse himself or herself from any investigation or prosecution "where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised." NDAA National Prosecution Standards, Sec. 1-3.3.d. (3rd ed. 2010).

To limit the possibility of conflicts, "[a] prosecutor should not hold an interest or engage in activities, financial or otherwise, that conflict, have a significant potential to conflict, or are likely to create a reasonable appearance of

conflict with the duties and responsibilities of the prosecutor's office." NDAA National Prosecution Standards, Sec. 1-3.1 (3rd ed. 2010).

Appointed prosecutors are prohibited from engaging in the private practice of law. General Statutes § 51-278a.<sup>5</sup> If a prosecutor learns, however, that a matter involves someone he or she represented before being appointed or is substantially related to the prosecutor's representation of a former client, the prosecutor should recuse himself or herself from the matter unless the client gives informed written consent. NDAA National Prosecution Standards, Sec. 1-3.3.a. (3rd ed. 2010). Similarly, a prosecutor should recuse himself or herself from the investigation and prosecution of any matter where the prosecutor, as a result of the prior representation of a client, is aware of privileged information that would be pertinent to the matter unless the client gives informed written consent. NDAA National Prosecution Standards, Sec. 1-3.3.b. (3rd ed. 2010).

Finally, a prosecutor should not participate in any matter where he or she has a significant personal, political, financial, business, or property relationship with another lawyer. NDAA National Prosecution Standards, Sec. 1-3.3.c. (3rd ed. 2010). This does not mean that prosecutors cannot maintain friendly relationships with defense attorneys. It does mean, however, that a prosecutor should recuse himself or herself from a case handled by an attorney if the prosecutor's relationship with the attorney is close enough that it might cause others to question the prosecutor's objectivity.

If a prosecutor learns of a potential conflict, he or she should immediately report the conflict to his or her supervising attorney who, after determining whether a conflict exists, may take steps to ensure that the conflict does not impact the prosecution of the matter.

## **H. Special Responsibilities of a Prosecutor**

In addition to the above rules, prosecutors should be familiar with Rule 3.8, which sets out requirements that apply specifically to prosecutors. Prosecutors should remember that the requirements set out in this rule are the *minimum*

---

<sup>5</sup> Although General Statutes § 51-278a does not include the designation of special deputy assistant state's attorney, such attorneys should not otherwise engage in the private practice of criminal law while working for the Division of Criminal Justice.

standard of ethical behavior and not a set of aspirational goals. In addition to the actual text of Rule 3.8, prosecutors should read and be familiar with the Commentary to the Rule and the rules of the National District Attorneys Association (NDAA), National Prosecution Standards, 3rd. Edition.

Rule 3.8 provides that a prosecutor shall:

(1) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(3) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(4) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(5) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

(6) When a prosecutor knows of new and credible evidence creating a reasonable probability that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall, unless a court authorizes delay:

(A) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to a court and an appropriate authority, and

(B) if the conviction was obtained in the prosecutor's jurisdiction, promptly disclose that evidence to the defendant, and a court and an appropriate authority.

### **Rule 3.8(1) — The Charging Decision**

Most criminal cases begin when a police officer arrests a suspect, either under the authority of an arrest warrant or based on a violation that the officer observes or learns of in the course of his duties. But the arrest simply brings the suspect to court. Only the prosecutor has the authority to file criminal charges. Unless the prosecutor signs an information charging specific offenses, the person may not be held to answer to a criminal charge. No one, not a police officer, elected official, or judge can override the prosecutor's decision to file — or not to file — a criminal charge.

In deciding whether to file a criminal charge, the prosecutor's first obligation is to ensure that probable cause exists to believe that the person committed the intended charge. No criminal charge may be filed absent probable cause. In many instances, the prosecutor initially must rely on a police report to make that determination. Depending on the circumstances, it may be wise — even necessary - to file a criminal information on that basis alone, particularly when the investigation is ongoing and is likely to yield more evidence against the accused.

But probable cause is the minimum evidentiary standard necessary to initiate a prosecution. To convict a defendant requires proof beyond a reasonable doubt. Thus, once the investigation is complete, the prosecutor must decide if the admissible evidence is sufficient, not merely to establish probable cause, but to convince a jury of the defendant's guilt beyond a reasonable doubt.

The decision whether or not to charge someone with a crime, or to maintain a prosecution, is necessarily based on a number of factors. Included among those are the nature and severity of the crime, the need to protect public safety, the strength of the evidence against the defendant, the need to deter others from similar conduct, the impact of the crime upon the victim, the defendant's criminal history, whether the defendant has taken any steps toward restitution or rehabilitation, and whether there are adequate nonjudicial means of addressing the behavior. In no event should a prosecutor file or maintain a criminal charge for the purpose of giving someone an advantage in a civil matter. Rule 3.4(7) (Fairness to Opposing Party and Counsel).

See also NDAA National Prosecution Standards, Sec. 4-2.4 — Factors to Consider (3rd ed. 2010).

### **Rule 3.8(2) & (3) — Dealing with an Unrepresented Defendant**

The Rules of Professional Conduct were written with the understanding that criminal defendants have a right to represent themselves. Accordingly, they do not prohibit prosecutors from having contact with unrepresented defendants. They do, however, require prosecutors to take steps to assure that the defendant understands his or her rights. When dealing with a self-represented defendant, a prosecutor should assure that the defendant understands that the prosecutor represents the state and is not the defendant's attorney. Rule 4.3 (Dealing with Unrepresented Person). Along those lines, a prosecutor should not give legal advice to an unrepresented defendant, other than the advice to secure counsel. If the defendant has not been advised of his or her right to counsel, the prosecutor should so advise the defendant and advise the defendant of the procedure for obtaining counsel. If a defendant indicates he or she wants representation, the prosecutor must make sure the defendant is given a reasonable opportunity to obtain counsel.

The rule prohibiting a prosecutor from seeking to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing, does not apply when the prosecutor is dealing with a defendant who has elected to proceed without counsel. Similarly, the rule does not forbid the lawful questioning of a suspect who has waived his right to counsel and silence. Commentary to Rule 3.3. Of course, a prosecutor should not communicate with a represented defendant, in the case in which he is represented, except through counsel. Rule 4.2.

See also NDAA National Prosecution Standards, Secs. 2-7.1 - Communications With Represented Persons; 2-7.2 - Communications With Unrepresented Defendants.

### **Rules 3.6 & 3.8(5) - Dealing with the Press**

There are times when a prosecutor, as a law enforcement official, will need to comment publicly about a criminal matter. For instance, a prosecutor might want to alert the public to an impending danger, to release information necessary to

aid in the apprehension of a suspect, or to inform the public that an investigation is ongoing or an arrest has been made. Such comments may promote public safety and/or dispel widespread unrest.

A prosecutor must be careful in speaking to the public, however, that he or she does not say anything that has a substantial likelihood of materially prejudicing a defendant's right to a fair trial. Thus, although a prosecutor may release the name and address of a defendant, along with the date and time of arrest, any statement that the defendant has been charged with a crime must be accompanied by a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent.

To avoid prejudicing a defendant's right to a fair trial, a prosecutor should try his or her case in the courtroom, not in the press. A prosecutor should not comment outside the courtroom about: (1) the defendant's or a witness's credibility or criminal record; (2) physical evidence expected to be presented at a trial; (3) the results of any examinations or tests or the refusal or any person to submit to any examination or test; (4) any information the prosecutor knows or reasonably should know is likely to be inadmissible at trial and the disclosure of which creates a substantial risk of prejudicing the defendant's right to a fair trial; (5) the possibility of a plea of guilty; (6) the contents of any statements made by a defendant or a refusal by the defendant to make a statement. A prosecutor also may not state his or her opinion about the guilt or innocence of the accused. Commentary to Rule 3.6 (Trial Publicity).

In addition, a prosecutor must take care to ensure that investigators, law enforcement officials and others working with the prosecutor do not make any statements that the prosecutor is prohibited from making. Rule 3.8(5).

### **Rule 3.8(4) - Discovery Obligations**

In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the United States Supreme Court held that "suppression by the prosecution of evidence favorable to the accused . . . violates due process where the evidence is material either to guilt or punishment, irrespective of the good or bad faith of the prosecution." A prosecutor who "withholds evidence . . . which, if made available, would tend to exculpate [the defendant] or reduce the penalty . . . casts the prosecutor in the role of an

architect of a proceeding that does not comport with standards of justice. . . ." *Id.*, 87-88.

In *Giglio v. United States*, 405 U.S. 150, 154 (1972), the Court held that impeachment evidence—i.e., any "evidence affecting [the] credibility" of prosecution witnesses—falls within *Brady's* definition of exculpatory evidence that must be disclosed to the defense. Under *Giglio*, the prosecution is responsible for the nondisclosure of impeachment evidence regardless of whether such nondisclosure resulted from negligence rather than design. *Id.* *Brady* and *Giglio* impose an independent obligation on the prosecution to disclose exculpatory evidence; hence, *Brady / Giglio* material must be disclosed to the defense even if opposing counsel has not asked for it. Moreover, *Giglio* imposes an affirmative duty on the prosecutor to learn of any inducements made to anyone "acting on the government's behalf" in the case, including investigating agents. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

Under *Brady* and *Giglio*, the state's duty to disclose exculpatory evidence applies not only to evidence known to the prosecutor trying the case, but also extends to evidence known to any prosecutor in the Division of Criminal Justice, the state police, and any local police departments or other state officials involved in the investigation of the matter. *Giglio v. United States*, *supra*, 405 U.S. 154; *Demers v. State*, 209 Conn. 143, 153 (1988). Accordingly, as a prosecutor, you have an affirmative duty to seek and disclose all exculpatory and impeachment information from every member of the "prosecution team" in each case to which you are assigned. You must always bear in mind that law enforcement officers are members of your prosecution team, and that our law imputes the collective knowledge of the prosecution team to you individually. Your ignorance of exculpatory evidence or impeachment material known by other members of the prosecution team—even if not willful—may undermine the integrity of the trial as well as the conviction.

All potential *Brady* and *Giglio* material known by, or in the possession of, the prosecution team must be gathered and reviewed to determine whether it is exculpatory in nature. *Giglio* material includes, but is not limited to:

- 1 Prior inconsistent statements made by the witness, whether or not the inconsistent statement was made to law enforcement.
2. Inducements provided to witnesses in exchange for their cooperation, such as:
  - (a) Dropped or reduced charges;
  - (b) Use immunity or agreements not to prosecute;
  - (c) Agreements to limit the state's arguments for a sentence;
  - (d) Promises regarding the forfeiture of assets;
  - (e) Stays of deportation or other immigration status benefits;
  - (f) Any tangible or monetary benefits, including payments for information, travel reimbursement, provision of lodging or travel, or the provision of any other pecuniary benefit, including minor outlays;
  - (g) Letters to other government officials setting forth the extent of a witness' assistance; and
  - (h) Promises relating to the witness protection program.
3. Other known conditions that could affect the witness' bias, including, but not limited to:
  - (a) Animosity toward the defendant;
  - (b) Relationship with the victim;
  - (c) Known but uncharged criminal conduct;
  - (d) Known prejudice or animosity towards any group of which the defendant is a member.
4. Known physical, mental, health, or substance abuse issues that reasonably could impact the witness' ability to recall or perceive the events about which he or she will be testifying.

5. Prior criminal convictions for felonies or crimes of moral turpitude.
6. For law enforcement witnesses, sustained complaints involving dishonesty such as falsifying a police report.
7. Where self-defense reasonably could be raised by the accused, convictions of the victim for crimes of violence and any other information that is material to the victim's reputation for violence.

Your duty to gather and disclose exculpatory and impeachment evidence is of paramount ethical importance. Thus, in most cases, when confronted with a "close call" as to whether certain evidence qualifies as *Brady* or *Giglio* material, you should err on the side of caution and disclose it to opposing counsel.

*Brady* information must be disclosed early enough "for its effective use at trial." *State v. Pollitt*, 199 Conn. 399, 414 (1986). Although our courts have not established a bright-line rule as to when a prosecutor must disclose exculpatory evidence in time for its "effective use," you should never conceal the existence of such evidence to gain a tactical advantage; instead, you should disclose such evidence as soon as reasonably practicable.

Remember that a prosecutor's *Brady* obligations apply not only to evidence that negates guilt, but also extends to any evidence that mitigates punishment. *Cone v. Bell*, 556 U.S. 449, 474-75 (2009).

### **The Duty To Correct False Testimony**

Under *Napue v. Illinois*, 360 U.S. 264, 269 (1959), and *Giglio v. United States*, supra, 405 U.S. 153, when a prosecutor knows that a witness has falsely denied striking a plea deal with the state, or knows that the witness has substantially mischaracterized the nature of an inducement, the prosecutor has an obligation to correct any misconception. It does not matter whether the cooperating witness actually intended to lie. *Napue* and *Giglio* require that the prosecutor apprise the court whenever the prosecutor knows the witness is giving testimony that is "substantially misleading." *State v. Ouellette*, 295 Conn. 173, 186 (2010).

As previously set forth, knowledge applies to the individual prosecutor trying the case and is imputed to all prosecutors in the Division of Criminal Justice.

In other words, a promise made to a witness by one prosecutor binds all other prosecutors in the Division. See *Giglio v. United States*, supra, 405 U.S. 154.

## Sanctions

The failure to disclose exculpatory or impeachment evidence can result in the reversal of a conviction or other sanctions, even if your failure was the result of ignorance or inadvertence. See, e.g., *Adams v. Commissioner of Correction*, 309 Conn. 359 (2013) (reversing murder conviction obtained with false testimony of key state's witness, in violation of *Giglio*). A knowing or willful failure to disclose such information is a violation of the Rules of Professional Conduct and could result in the Bench or Bar taking disciplinary action against you. For instance, Rule 3.8(4) requires that a prosecutor "[m]ake timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor . . . ."

See also NDAA National Prosecution Standards, Secs. 4-9.1 - Prosecutorial Responsibility in Discovery; 4-9.3 - Access to Evidence Not to be Impeded.

## **Responsibilities to Victims**

Although a prosecutor should treat everyone with whom he or she interacts with respect, the prosecutor should be particularly sensitive when dealing with the victims of crime. Prosecutors should keep in mind that a victim may have been traumatized by the criminal actions of the defendant and that the failure to treat the victim with respect can exacerbate that trauma. They also should be mindful that many victims want to keep abreast of what is happening with the criminal case and, equally as important, to know that their concerns are taken into consideration by both the prosecutor and the court when deciding what to do with the case.

Our state constitution guarantees victims the right to be treated with fairness and respect throughout the criminal justice process. Conn. Const. Article First, § 8.b. It also guarantees victims the right to: (1) timely disposition of a criminal case following the arrest of the accused, provided no right of the accused is violated; (2) be reasonably protected from the accused throughout the criminal justice process;

(3) notification of court proceedings; (4) attend trial and court proceedings involving the accused, unless the victim is a witness and sequestration is required; (5) communicate with the prosecutor; (6) object to or support any plea agreement and to make a statement to the court prior to the acceptance of a plea of guilty or nolo contendere; (7) make a statement to the court at sentencing; (8) information about the arrest, conviction, sentence, imprisonment and release of the accused. Conn. Const. Article First, § 8.b. The prosecutor's specific obligations to the victims of crime are set forth in our statutes and are summarized in the Prosecutor's Deskbook.

### **CONCLUSION**

As the United States Supreme Court noted in *Berger v. United States*, 295 U.S. 78, 88 (1935), prosecutors are in a "very definite sense [servants] of the law . . . ." Justice demands that prosecutors, as representatives of the state, always seek to do the right thing and act in accordance with the highest ethical standards.