UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED LOCAL RULE CHANGE AND OPPORTUNITY TO COMMENT

In 2015 an *ad hoc* committee established by former Chief Judge Royce Lamberth examined whether it was worthwhile for our district to promulgate a local rule regarding government disclosure of exculpatory information in criminal cases. The committee was chaired by Judges Colleen Kollar-Kotelly and Jeb Boasberg, and it included Earl Silbert of DLA Piper, Federal Public Defender A.J. Kramer, American University Law Professor Cynthia Jones, USAO Criminal Division Chief Jonathan Malis, Mary Pat Brown of O'Melveny & Myers, and Manuel Retureta of Retureta & Wassem.

The committee ultimately forwarded a proposed rule to the full complement of judges in this district, who have now spent some time discussing the advisability of such a rule and its particular provisions. As the Court believes that hearing from practitioners and the public will assist its deliberations concerning the proposed rule, it is now sending the rule out for comment.

Pursuant to Local Criminal Rule 57.1, the Court is required to advise that the proposed rule will be adopted unless modified or withdrawn by the Court after receiving comments from organized bar associations, members of the bar, and the public. Such comments must be made in writing within 45 days of the publication of this Notice and should be addressed to John Aldock, Esq., Chairman, Advisory Committee on Local Rules, Goodwin Proctor LLP, 901 New York Avenue, N.W; Washington, DC 20001.

ANGELA D. CAESAR, CLERK.

PROPOSED DISCLOSURE RULE

(a) Unless the parties otherwise agree, the government shall make available to the defense any non-trivial information known to the government that tends to negate the defendant's guilt, mitigate the charged offense(s), or reduce the potential penalty. This requirement applies regardless of whether the information would itself constitute admissible evidence. The information, furthermore, shall be produced, where not prohibited by law, in a readily usable form unless that is impracticable; in such a circumstance, it shall be made available to the defense for inspection and copying.

The government shall make good-faith efforts to promptly disclose the information to the defense beginning at the defendant's initial appearance before the court, and this obligation shall remain ongoing throughout the criminal proceeding.

(b) The information to be disclosed includes, but is not limited to:

(1) Information that is inconsistent with or tends to negate the defendant's guilt as to any element, including identification, of the offense(s) with which the defendant is charged;

(2) Information that tends to establish an articulated and legally cognizable defense theory or recognized affirmative defense to the offense(s) with which the defendant is charged;

(3) Information that casts doubt on the credibility or accuracy of any evidence, including witness testimony, the government anticipates using in its case-in-chief at trial; and

(4) Impeachment information, which includes: (i) information regarding whether any promise, reward, or inducement has been given by the government to any witness it anticipates calling in its case-in-chief; and (ii) information that identifies all pending criminal cases against, and all criminal convictions of, any such witness.

(c) As impeachment information described in (b)(4) is dependent on which witnesses the government intends to call at trial, this rule does not require the government to disclose such information before a trial date is set.

(d) In the event the government believes that a disclosure under this rule would compromise witness safety, 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.

(e) For purposes of this rule, the government includes federal, state, and local law-enforcement officers and other government officials participating in the investigation and prosecution of the offense(s) with which the defendant is charged. The government has an obligation to seek from these sources all information subject to disclosure under this Rule.

(f) The Court may set specific timelines for disclosure of any information mentioned in this rule.