

Proposed Rule 5-110 Special Responsibilities of a Prosecutor Draft and/or Concept Synopsis of Public Comments						
No.	Commenter/Signatory	Comment on Behalf of Group?	Position <sup>1</sup>	Rule	Comment	RRC Response
2016-119	Adams, Jesse M. (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-193	Afrashteh, Mona (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-127	Aguirre, Carmine (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-311	Alex, Marie F. (2-29-16)	No	Alt. 1	5-110	Prosecutors should ethically disclose all exculpatory evidence because that is the current state of the law in CA.	
2016-323	American Bar Association (ABA), Thomas Susman (3-15-16)	Yes	Alt. 1	5-110	The proposed rule would appropriately apply to federal prosecutors. Federal prosecutors already comply with disclosure law drawn from various sources, including case law, statutes, and rules of criminal procedure. The ethics rule would not interfere in any way with federal prosecutors' other obligations.  There is nothing anomalous or	

<sup>1</sup> Alt. 1 = Support Alt. 1 Draft and/or Concept Alt. 2 = Support Alt. 2 Draft and/or Concept NA = No Preference Expressly Indicated

NOTE: Full text of comments available from State Bar staff upon request by contacting Audrey Hollins ([audrey.hollins@calbar.ca.gov](mailto:audrey.hollins@calbar.ca.gov)) or 415-538-2167.

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					<p>troubling about a state ethics rule that is more demanding than other law on the subject. In general, ethics rules go beyond existing law, rather than merely restating or codifying existing law or incorporating it by references. (See, CRPC 2-100; ABA 4.2).</p> <p>Federal prosecutors' legal obligation to comply with state ethics rules that supplement existing legal restrictions has two undeniable bases. First, the obligation is generally established by local rules of the federal courts that make clear the state ethics rules applicable to attorneys in federal judicial proceedings. Second, and wholly apart from the federal court rules, the obligation is established clearly and equivocally by federal statute (see, the McDade Act, 28 USC § 530B).</p>	
2015-13	Anderson, Ed (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-225	Anderson, Johnnetta E. (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-110	Arant, Adam (2-24-16)	No	Alt. 1	5-110	Claims that proposed rule comports with existing law and that proposed rule will incentivize	

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					prosecutors to turn over evidence.	
2016-305	Archer, Jennifer (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Prosecutor should not be allowed to make determination of what is material or exculpatory.	
2015-50	Arfa, Faye (11-28-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-98	Ayala, Rose (2-24-16)	No	Alt. 1	5-110	Approves of the Commission's proposed rule.	
2016-129	Baldwin, Maureen (2-24-16)	No	Alt. 1	5-110	Approves of the Commission's proposed rule.	
2015-4	Barrett, Brendan (11-23-15)	No	Alt. 1	5-110	Written comments address rule 5-110. Agrees with proposed rule as needed to end prosecutor "gamesmanship". Believes the alternative draft is toothless.	
2015-3	Barrett, Brendan (11-24-15)	No	Alt. 1	5-110	Agrees with proposed rule as needed to end prosecutor "gamesmanship". Believes the alternative draft is toothless.	
2016-100	Barrett, Brendan (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-224	Bartle, Rory (2-25-16)	No	Alt. 1	5-110	Proposed rule represents full and good faith exchange of information that helps all California citizens.	

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2016-260	Batchelder, Elias (2-29-16)	No	Alt. 1	5-110	If a prosecutor is aware of exculpatory information, he should be ethically bound to disclose it. Regardless if defense counsel can point out it exists.	
2015-52	Becker, Mark (11-30-15)	No	Alt. 1	5-110	Agrees with proposed rule as necessary to require prosecutors to disclose all exculpatory evidence, regardless whether prosecutors think it is material. Expressed concern that despite existing case law, prosecutors frequently fail to disclose all exculpatory evidence.	
2016-254	Beekman, Catherine (2-28-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-159	Bell, John T. (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-243	Benkle, Seth (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Proposed rule helps balance power in a system heavily weighed against defendants.	
2016-97	Berkowitz, Barney (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-94	Bermant, Alison (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2016-124	Black, William (2-24-16)	No	Alt. 1	5-110	Approves of the Commission's proposed rule.	
2016-295	Bloom, Brian (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-201	Blum, Edward J. (2-25-16)	No	Alt. 1	5-110	Defendants need this proposed rule to be able to go to the Bar to report bad prosecutors because no one else in the system will punish them.	
2016-314	Bobrow, Oscar (2-29-16)	No	Alt. 1	5-110	I support ALT 1. During my career as a criminal defense attorney I have had countless situations where prosecutors have not turned what I believed to be material information for the preparation of my case. ALT 1 would require the disclosure of all exculpatory evidence whether or not the prosecutor thinks such evidence is material or inconsequential to the outcome of the proceeding.	
2016-77	Bonner, Mark (2-1-16)	No	NA	5-110	Former prosecutor who disagrees with proposed rule because it would ethically require discovery beyond that required by current statutes and case authority. Contends that discovery rules should be promulgated through proper channels, not through the ethics rules.	

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2016-203	Boskin, Pamela (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-161	Boudin, Chesa (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-67	Boyd, David (2-1-16)	No	NA	5-110  (C) and Disc. [2]  (E)	Disagrees with proposed rule as duplicative of existing law, confused, and unconstitutional, and will allow prosecutors to use the “flawed language” to their advantage but will not improve public confidence in the criminal justice system.  Believes paragraph (C) and discussion [2] implies a duty for prosecutors to advise or seek a waiver from suspects in situations where the law does not otherwise require (e.g. an uncharged suspect not in custody), which will discourage law enforcement from consulting with prosecutors early in the investigation. Also believes it is in tension with current rule 2-100(C)(3).  Believes paragraph (E) creates a conflict with the California Constitution with respect to a prosecutor’s ability to present evidence. (Art. I, sec. 28(f)(2))	

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2015-40	Boyle, Robert (11-25-15)	No	Alt. 1	5-110	Agrees with rule as a necessary mechanism to enforce fair dealing by prosecutors. Believes, based on personal experience as a defense attorney, that there is a consistent pattern of prosecutors failing to disclose evidence.	
2016-273	Brady, Christine (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-30	Braun, Geoffrey (11-24-15)	No	Alt. 1	5-110	Agrees with proposed rule as necessary to send a clear message that all exculpatory evidence must be disclosed. Through examples expressed concern that violations resulted in harm to criminal defendants.	
2016-152	Brogna, Sheila (2-25-16)	No	Alt. 1	5-110	Proposed rule prevents reversals.	
2016-294	Brown, Aundrea (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-171	Brown, Lynette (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Proposed rule adds clarity to prosecutors' duties.	
2016-68	Brown, Michael (2-2-16)	No	Alt. 1	5-110	Suggested additions to the rule regarding prosecutor compliance with probable cause requirement, an independent review process, and that prosecutors shall not condone harassment by police or	

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					officials.	
2016-174	Burk, Kristine (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Justice system served by clarity that proposed rule provides.	
2016-126	Byron, David J. (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-206	Caballero, Michael (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-104	Caine, Christopher J. (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-65	California Appellate Project – Los Angeles Office, Jonathan Steiner (1-29-16)	Yes	Alt. 1	5-110	Proposed rule helps to avoid risk of due process violations and ensure a full appellate record required to defend constitutional rights. Expressed concern regarding the uncertainty among prosecutors as to what constitutes their ethical obligations, including the duty to disclose evidence that is not “specifically material.”	
2016-259	California District Attorneys Association (CDAA), Multiple Signatories (2-26-16)	Yes	Alt. 2	5-110	CDAA supports ALT 2. We do not believe ALT 2 seeks to limit pretrial discovery obligations with a <i>Brady</i> materiality standard – in fact, it expressly ties the prosecutor’s responsibilities to	



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					<p>“statutory ... obligations, as interpreted by case law,” which have no <i>Brady</i> materiality limit.</p> <p>We agree with the “timeliness” obligation, as stated in Discussion paragraph [3]. We assume the Commission’s official Discussion section will have interpretive force with respect to any adopted rule comparable to official law revision commission comments with respect to statutes, i.e. they will be entitled to substantial weight in construing the rule. We note that this interpretation would be the same under ALT 2, which expressly ties the prosecutor’s obligations to statutory and case law, just as the Commission’s Discussion paragraph does.</p> <p>We believe that the language of the proposed rule should require personal knowledge and note that the rule language specifically refers to material “known to the prosecutor.” We note the California Public Defenders Assoc. and Calif. Attorneys for Criminal Justice agree that for discipline purposes, the rule requires actual knowledge of the</p>	

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					<p>individual prosecutor. CDAA agrees with CPDA and CACJ on this interpretation. While the Commission's Discussion paragraphs do not further address the point, the language itself seems clear.</p> <p>CDAA agrees with the removal of the requirement that evidence in mitigation of sentencing must be disclosed to the "tribunal."</p> <p>While the standard for the timing of disclosure is tied by the Commission's Discussion paragraph which points to statutes and court orders, the standard with respect to the type of evidence is not. The failure to anchor the meaning of "evidence or information," "tends to negate ... guilt," and "mitigates the offense," to some specific or particular criteria leaves prosecutors without reasonable means to know where the lines are. This is a matter of great concern when crossing the lines could lead to professional discipline. As one example, California case law at this time does not make clear whether all witness impeachment evidence is</p>	

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					<p>“exculpatory” within the meaning of Penal Code sec. 1054.1(e).</p> <p>CPDA and CACJ argued in their Oct. 8 letter that prosecutors are free to ignore their duty to disclose exculpatory evidence because B&amp;P Code sec. 6068.7 only requires mandatory referral to the state bar if a prosecutor’s withholding of evidence was “material” under <i>Brady</i>. This argument fails to acknowledge that 6086.7 has been amended to include as basis for a mandatory state bar referral, a finding by a court that a prosecutor deliberately withheld exculpatory evidence, without any requirement that the evidence was material under <i>Brady</i>, or that the case was reversed or judgment modified as a result. (B&amp;P Code sec. 6068.7(a)(5); Pen. Code sec. 1424.5).</p>	
2015-35	Camarillo, Brandon (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-299	Carlisle, David (2-29-16)	No	Alt. 1	5-110	Proposed rule is step toward keeping our justice system equitable for all.	
2016-211	Carlson, Katherine (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2016-116	Carrasco, Gerald C. (2-24-16)	No	Alt. 1	5-110	Recited an example where failure to disclose existence of witness resulted in lost evidence due to witness's death.	
2015-31	Carrington, Felicia (11-24-15)	No	Alt. 1	5-110	Expressed concern, through examples, that investigators and process servers contribute to a prosecutor's ability to skirt their disclosure obligations.	
2016-217	Carrillo, Christian (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-135	Carrington, Felicia (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-162	Case, Linda (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-43	Casebeer, Megan (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-76	Chestnut, William (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-248	Cho, Rosy H. (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-304	Chorney, Jeff (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-115	Clark, Stephanie (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2015-15	Clarke, Joseph (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-169	Clemans, Victoria (2-25-16)	No	Alt. 1	5-110	Claims courts favor prosecutors.	
2016-109	Coffino, Michael (2-24-16)	No	Alt. 1	5-110	Agrees with rule.	
2016-322	Committee on Professional Responsibility and Conduct (COPRAC), Merri Baldwin (2-29-16)	Yes	Alt. 1	5-110	<p>COPRAC supports ALT 1 because we believe there is value in maintaining uniformity with other jurisdictions. In addition, ALT 2 would not create a more defined standard to the extent there is uncertainty as to what the current requirements imposed by law are. Making clear the disciplinary consequences of a prosecutor's failure to turn over exculpatory evidence in a timely manner would add significant public protection.</p> <p>Some COPRAC members voiced concern that, in interpreting the proposed rule, the State Bar could impose a disclosure standard different than that which exists in California law in circumstances in which the prosecutor made a reasoned decision as to whether evidence was exculpatory or not (certain</p>	

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					<p>forms of impeachment evidence, for example), and impose discipline for conduct that otherwise met the obligations set forth in law. However, the majority of the Committee supports adoption of the Rule and Comments as proposed by the Commission.</p> <p>COPRAC also examined the issues raised by George Cardona's thoughtful dissent from the adoption of paragraph (E) of the rule, governing subpoenas to attorneys, including his observation that many leading white-collar jurisdictions have not adopted the rule. However, as we looked further, we couldn't find any strong policy arguments in the literature against that part of the rule, or any sign that it has created law enforcement problems in the jurisdictions where it has been adopted. The common sense reason would appear to be that paragraph (E) of the rule, like paragraph (D), runs in parallel with a wide variety of discovery and evidentiary rules and internal prosecutorial guidelines—so that in fact the rule would not significantly alter</p>	

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					current practice.	
2016-199	Cooney, Patricia (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-82	Coopersmith, Alanna (2-24-16)	No	Alt. 1	5-110	Agrees with Commission's proposed rule.	
2016-263	Cox, Jason (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Prosecutorial discovery violations are rampant. One way this happens is by claiming evidence is not material. The proposed rule is in line with existing case law. The basic concept is that materiality is a post-conviction standard for determining prejudice, not a pre-trial standard for determining a defendant's right to discovery in the first place.	
2015-59	D'Agustino, Elena (12-4-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-190	Daly, Morgan (2-25-16)	No	Alt. 1	5-110	It's only fair that prosecutors disclose all exculpatory and mitigating evidence. This rule will help protect the innocent.	
2015-34	Dark, Patricia (11-25-15)	No	Alt. 1	5-110	Agrees with proposed rule as required by justice, to prevent wrongful convictions, avoid	

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					overcharging, and conserve public and judicial resources. Expressed concern that bench is unwilling to enforce existing law.	
2016-230	Davis, Ryan (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-117	Defilippis, Steve (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-258	Delgado, Jessica (2-29-16)	No	Alt. 1	5-110	Proposed rule is vital to maintaining or restoring the integrity of criminal justice system in California.	
2015-37	Dell'Anno, Anthony (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-298	Denton, Chuck (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-125	Diamond, Cindy A. (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-212	Dice, Frank W. (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-92	Diederichs, Michele (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-241	Dier, Wendy (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	



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2016-75	DiSabatino, Frank (2-25-16)	No		5-110	Agrees with the proposed rule.	
2016-179	Djafar, Malike (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-96	Dobbyn, Gerard (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-45	Dodd, Peter (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-252	Dombois, Markus (2-28-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Non-disclosure is a systemic problem in some DA's offices.	
2016-136	Dove, Austin (2-24-16)	No	Alt. 1	5-110	Identifies instances where prosecutor has withheld evidence because the end justifies the means. Claims the proposed rule is a step in the right direction.	
2016-145(b)	Downing, Ariana (2-24-16)	No	Alt. 1	5-110	Likes bright line rule as it removes prosecutorial discretion as to materiality.	
2016-186	Dudley, Michael (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-300	Edgar, Deedrea (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  The way to have a fair justice system and avoid wrongful convictions is to have rules that	

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					are fair, clear and enforceable.	
2016-154	Erickson, Kristin A. (2-25-16)	No	Alt. 1	5-110	Proposed rule needed to “balance the scales.”	
2016-320	Farrow, Susan (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-55	Faulkner, Aaron (11-30-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-32	Fernandez, Edward (11-24-15)	No	Alt. 1	5-110	Agrees with proposed rule as necessary to restore balance and enforce the law. Believes, based on personal experience as former prosecutor, that prosecutors delay disclosure under belief they “know better,” and that the rule is not “surplusage.”	
2016-148	Field, Skip Allen (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-189	Fisher, Barbara E. (2-25-16)	No	Alt. 1	5-110	Agrees with Commission’s proposed rule.	
2016-281	Folker, Jason M. (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-78	Foster, Jodea (2-3-16)	No	Alt. 1	5-110	Criminal defense attorney who agrees with rule and provides examples of prior prosecutorial conduct that she claims violated their professional obligations.	

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2016-318	Foxall, Richard (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-247	Franco, Yolanda (2-26-16)	No	Alt. 1	5-110	Recounted examples from practice where attorney believes plea deals were proposed by prosecutors instead of producing exculpatory evidence.	
2015-10	Friedman, Jennifer (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-27	Friedman, Jennifer (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-290	Galambos, Guy (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-284	Gallagher, Tracey (2-26-16)	No	Alt. 1	5-110	Recounts examples where prosecutors fail to timely turn over evidence.	
2016-166	Garber, Leonard (2-25-16)	No	Alt. 1	5-110	Proposed rule helps ensure fair system.	
2016-99	Garcia, Armando (2-24-16)	No	Alt. 1	5-110	Approves of the Commission's proposed rule.	
2016-287	Gardner, Abraham (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  This Rule would go a long way in answering our community's call for reforms to restore community faith in our criminal justice system.	

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2016-151	Gardner, Renee Yvonne (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-276	Giambona, Salvatore (2-29-16)	No	Alt. 1	5-110	Prosecutors routinely fail to adhere to their constitutional duty to reveal evidence because there is no consequence. Proposed rule is step in right direction.	
2016-80	Gilreath, Tawnya (2-8-16)	No	Alt. 1	5-110	Agrees with proposed rule but believes that it should apply equally in civil proceedings where people are being “prosecuted” for alleged code violations and losing their homes without probable cause or the right to counsel.	
2016-140	Glucroft, Lesa Morse (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-142	Glucroft, Robert (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-306	Goldstein-Breyer, (2-29-16) Joseph	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-147	Gottesman, Ann A. (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-215	Graf, Sheryl (2-25-16)	No	Alt. 1	5-110	Agree with proposed rule because it promotes fair administration of justice.	
2016-228	Granger, Jennifer (2-25-16)	No	Alt. 1	5-110	Agrees with Commission’s proposed rule.	

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2016-106	Greenberg, Evan Charles (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-131	Groshan, Justin (2-24-16)	No	Alt. 1	5-110	Approves of the Commission's proposed rule.	
2016-232	Gundel, Jason (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-251	Gutierrez, Bonita (2-28-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-33	Guzman, Jorge (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-47	Haddox, David (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-128	Hagler, Thomas M. (2-24-16)	No	Alt. 1	5-110	Approves of the Commission's proposed rule.	
2016-296	Hall, Carrie (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-102	Hanania, Mitri (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-149	Hauser, Steven K. (2-24-16)	No	Alt. 1	5-110	Agrees with Commission's proposed rule. Justice demands full disclosure by the prosecution in criminal cases. There are too many wrongful convictions in California.	

Proposed Rule 5-110 Special Responsibilities of a Prosecutor Draft and/or Concept Synopsis of Public Comments						
No.	Commenter/Signatory	Comment on Behalf of Group?	Position <sup>1</sup>	Rule	Comment	RRC Response
2016-91	Henderson, Elaine (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-39	Henneman, Krista (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-213	Hennessy, Timothy (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Rule will bring CA in line with rest of U.S. jurisdictions.	
2016-81(b)	Henschel, Brad (2-13-16)	No	NA	5-110	Proposed rule doesn't go far enough in that it should require prosecutors to disclose when police lie to them. Contends that the rule fails to address the financial impact to the state.	
2016-307	Hernandez, Juan (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-123	Hicks, Anthony (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-86(a)	Hingle, Michael (2-24-16)	No	Alt. 1	5-110	Rule is long overdue. Wants it to apply to federal prosecutors who are State Bar members also.	
2016-134	Horner, Robert B. (2-24-16)	No	Alt. 1	5-110	Approves of the Commission's proposed rule.	
2016-84	Hudson, Harry (2-24-16)	No	Alt. 1	5-110	Agrees with proposed rule and claims he has had cases where facts in report don't support allegations.	

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2016-301	Innocence Project, Barry Scheck (2-29-16)	Yes	Alt. 1	5-110	<p>We strongly support the letter form the Loyola Law School's Project for the Innocence responding to submissions by Stacy Ludwig and Laura Duffy on behalf of Dept. of Justice and U.S. Attorneys respectively. We add two observations:</p> <p>First, the whole purpose of ABA 3.8(d) is to put forward a prospective, prophylactic rule to prevent Brady violations – the suppression of “material” exculpatory evidence. Before a trial that has not yet occurred, before knowing the defense evidence, being naturally subject to confirmation bias (the tendency to view information as confirming a pre-existing position, such as the defendant is guilty), it is a difficult, perhaps impossible cognitive task for a prosecutor to know for certain whether the failure to make “timely” disclosure of one or more facts (information) that “tends to negate the guilt” could ultimately prove to be, “material.” Federal prosecutors have been subject for decades to a 3.8(d) standard and have not had any serious trouble conforming their conduct to the</p>	

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					<p>requirements of the rule.</p> <p>Second, the dispute around this issue is reminiscent of the controversy that arose two decades ago over whether federal prosecutors should be subject to state “no contact” ethics rules. Congress responded by passing the McDade Act (“an attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that State”) which, in effect, expressly rejected the idea that federal prosecutors should be exempt from state ethics rules like 3.8(d) that are intended to supplement and assist prosecutors to avoid constitutional violations. The McDade Act settled the “no contact” controversy and changed the behavior of prosecutors in state and federal courts. Adoption of 3.8(d) will do the same.</p>	



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2016-234(a)	Jafine, Kelly (2-25-16)	No	Alt. 1	5-110	Proposed rule help declare clear standard to prosecutors and imposes a sanction for miscarriages of justice.	
2016-64	Janoe, Bobby S. (1-15-16)	No	Alt. 1	5-110	Commenter provided personal story as convicted criminal defendant stating prosecutor failed to turn over exculpatory evidence and knowingly permitted perjured testimony, and that the conduct has not been addressed or investigated.	
2016-120	Johnson, Carla J. (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-214	Johnson, Cathy (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-183	Johnson, Ronald (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-87	Johnson, Todd (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-160	Jones, Ashley (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-216	Jones, Raymond (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-288	Jorjani, Raha (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2016-70	Judge Cordell, Ladoris (Ret.) (2-6-16)	No	Alt. 1	5-110	Agrees with proposed rule and the removal of the materiality standard. Provided personal observations as judge and police auditor indicating that police and prosecutors often have a narrow interpretation of what is material. Believes the rule is necessary to require prosecutors to err on the side of disclosure which will protect against wrongful convictions and reduce post-conviction litigation.	
2016-74	Kasolas, George (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-18	Katano, Akio (11-24-15)	No	Alt. 1	5-110	Agrees with proposed rule to protect rights of citizens from overreaching and misconduct. Noted that Brady violations and prosecutorial misconduct are a "problem of epic proportion."	
2016-163	Kayfetz, Lael (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-6	Kelly, Patrick (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-269	Kendall, Denise (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-38	Khorasani, Maryam (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2016-132	Kinsey, Jr., Edward W. (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-89	Kirchick, Stuart D. (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-289	Kopchak, Ryan (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-180	Kovaly, Jill (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-195	Kramer, Lauren (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Proposed rule will bring CA in line with Model Rule and will help curb prosecutorial abuse.	
2016-274	Krause, Tracy (2-29-16)	No	Alt. 1	5-110	Agrees with Commission's proposed rule holding prosecutors accountable for providing timely exculpatory discovery. Current system does not adequately protect defendants from the loss of exculpatory evidence that might make a difference in their jury trials.	
2015-41	Krueger, Angela (11-25-15)	No	Alt. 1	5-110	Agrees with rule as a needed incentive or tool to reduce cause of wrongful convictions. Agrees that rule apply to all exculpatory evidence because prosecutors cannot determine materiality	

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					prospectively. Expressed concern that despite existing law requiring disclosures (Pen. Code §1054.1), Brady violations are prevalent and no State Bar or Court action taken.	
2016-122	Krueger, Angela (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Proposed rule minimizes the risks of wrongful conviction.	
2016-200	Kuchar, Michael (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-8	Kulick, Kelley (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-235	Lagod, Alan M. (2-25-16)	No	Alt. 1	5-110	Agrees with Commission's proposed rule.	
2016-227	Lai, Johnny (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  This will bring rules in line with existing CA case law.	
2016-158	Laidley, Pierpont M. (2-25-16)	No	Alt. 1	5-110	Agrees with Commission's proposed rule. Has first-hand experience with a prosecutor intentionally hiding exculpatory evidence. Rule needed to avoid convicting the innocent.	
2016-105	Lambe, James (2-24-16)	No	Alt. 1	5-110	Supports the Commission's proposed rule.	

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2016-270	Landau, Jeffrey (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-187	Latimer, Denver (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-250	Lawrence, Helen (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-93	Lee, Sung (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-12	Leonard, Samuel (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-61	Leonard, Samuel (1-6-16)	No	Alt. 1	5-110	Noted error in Discussion par. [1]. Phrase reading “that guilty” should read “that guilt.”	
2016-107	Levin, Sydney (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-278	Lindsey, Jelani J. (2-29-16)	No	Alt. 1	5-110	Agrees with Commission’s proposed rule.	
2016-121	Lockhart, Karen (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-62	Logan, William (1-7-16)	No	Alt. 1	5-110	Noted need for the proposed rule to address failures of prosecutors to comply with their duties. Expressed concern that the rule will not have “enforcement teeth.”	

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2016-156	London, Lori (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Prosecutor is supposed to administer justice, not just be an advocate.	
2016-112	Lopez, Gabriela (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-309	Los Angeles County Public Defender, Ronald Brown & Janice Fukai (2-24-16)	Yes	Alt. 1	5-110	In order to promote the worthwhile goal of fewer erroneous convictions, the Commission should support the adoption of a rule of professional conduct that mirrors ABA Model Rule 3.8, by adopting ALT 1.  Our experience is that non-compliance with <i>Brady</i> is pervasive. Limiting the duty to disclose to case or statutory law would result in disclosure of exculpatory information only if the information is “material.” A prosecutor should never be in the position of himself or herself determining whether exculpatory evidence is material. If evidence is exculpatory it should be provided to the defense, so that the defense, not the prosecution, can evaluate the extent to which the evidence will support the intended defense at trial.	

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2016-73	Loughborough, James	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-310	Loyola Law School Project for the Innocent, Laurie Levenson & David Burcham (2-29-16)		Alt. 1	5-110	<p>This letter is a brief response to the public comments made by Stacy Ludwig and Laura Duffy, offered on behalf of Dept. of Justice and U.S. Attorneys at the public comment hearing in L.A.</p> <p>Ms. Ludwig and Ms. Duffy do not represent all prosecutors who have served in the Dept. of Justice. As documented in a letter dated Feb. 1<sup>st</sup>, 2016, at least 100 former federal prosecutors have written in support of the Proposed Rule. As stated in the letter, they support the Proposed Rule because it better ensures that exculpatory evidence will be disclosed to the defendant. These former prosecutors have not perceived any difficulty in understanding or complying with the language of the Proposed Rule.</p> <p>Additionally, Ms. Duffy's suggestion that federal prosecutors cannot operate under the proposed standard is without merit. Rule 3.8(d) has been in effect throughout this</p>	

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					<p>country for almost a decade. In fact, it is based on ABA Standards for Criminal Justice: Prosecution Standard 3-3.11 that has been in effect since 1964. Federal prosecutors are quite accustomed to working under its standards, as Rule 3.8(d) has been adopted by states throughout the nation. Even many of California's federal prosecutors already embrace this approach.</p> <p>Current objections to ALT 1 are nothing more than an attempt to retain a "materiality" requirement for prosecutors' discovery obligations. ALT 2 creates a less protective, more complicated standard, by instructing prosecutors to rely on case law to determine whether their decisions regarding materiality can be justified if there is a failure to disclose exculpatory evidence.</p> <p>We support ALT 1. The rule is not designed, nor has it been used in other jurisdictions, to unleash a flurry of disciplinary actions against prosecutors. It is an easy-to-follow, plainly stated rule that, in fact, prevents prosecutors from</p>	



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					making bad assessments as to how the defense is likely to use exculpatory evidence at trial.	
2015-51	Lozada, Paul (11-30-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-118	Lueck, John (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Believes that proposed rule doesn't go far enough: there should be "sanctions" for not turning over evidence immediately after defendant has retained counsel; wants an affirmative duty on prosecutor to seek evidence controlled by third parties.	
2016-170	Lui, Marie (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-168	Lutes-Koths, Kimberly (2-25-16)	No	Alt. 1	5-110	Proposed rule is positive step in curtailing prosecutorial misconduct.	
2016-178	Lynch, David (2-25-16)	No	Alt. 1	5-110	Agrees because proposed rule requires full disclosure with exceptions where appropriate.	
2016-72	Majchrzak, David (2-24-16)	No	Alt. 2	5-110	The rule may require an overly broad duty of prosecutors to disclose evidence. There is an inherent problem with a rule creating a standard that requires broader disclosure than what substantive law requires.	

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					<p>The proposed rule does not fill a gap in California law. Legislatures and courts have established a voluminous body of law defining criminal defendants' due process rights. An ethical rule does not change those due process rights. And it does not change the remedy available to the criminal defendant for any harm if those rights are violated.</p> <p>Any standard for failing to disclose information should have a requirement that the prosecutor knew that the information tended to negate the guilt of the accused or mitigate the offense. See, Mass. Rule 3.8, Cmt. 3(A).</p> <p>The rule could be written more clearly. The rule should expressly address whether it is intended to include evidence or information that could be used to impeach prosecution witnesses. The rule does not clearly state whether it will address such obligation.</p> <p>Incorporating as much of the Comments into the rule as possible will aid in establishing the guidelines for prosecutors to follow.</p>	

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					Regarding the word “timely,” in paragraph (d), I offer the following suggested language to more precisely state what “timely” means: “within the time required by statute, procedural rule, or court order, disclose to the defense all evidence or information that existing federal or California law requires to be produced and that the prosecutor knows tends to negate the guilt of the accused, mitigates the offense, or impeaches prosecution witnesses, unless the court otherwise orders.”	
2016-253	Mann, David (2-28-16)	No	Alt. 1	5-110	Agrees with Commission’s proposed rule.	
2016-139	Martinez, Anna (2-24-16)	No	Alt. 1	5-110	Approves of the Commission’s proposed rule.	
2016-177	Masi, Mary (2-25-16)	No	Alt. 1	5-110	The rule doesn’t have real teeth but it’s a step in the right direction.	
2016-103	Mayfield, Daniel Miller (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-172	McCarthy, Sarah (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2015-49	McIlroy, Julia (11-28-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-282	McKneely, Michael (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-173	McMillin, James (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-264	Miller, Eli (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-202	Miranda, Douglas (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-197	Moore, Artricia (2-25-16)	No	Alt. 1	5-110	Recounted experience as public defender where prosecutor fails to turn over evidence in his or her possession until the eve of trial without repercussion.	
2016-231	Morga, Maria (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-28	Morton, Jenna (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-220	Mowrer, Glen (2-25-16)	No	Alt. 1	5-110	Proposed rule will help remind prosecutors that they are supposed to be impartial administrators of their duty, not strictly there to convict.	
2016-246	Mowry, Shawn (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2016-184	Mueting, Lisa Bertolino (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-88	Muller, Barbara (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-25	Munkelt, Stephen (11-24-15)	No	Alt. 1	5-110	Agrees with proposed rule, noting that all other jurisdictions have a rule on the subject, which is needed to motivate prosecutors to disclose all exculpatory evidence.	
2016-95	Needle, Joshua (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Wants prosecutors to turn over more to defense counsel and have less discretion.	
2016-302	Newman, James (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-54	Nguyen, Hien Ngoc	No	Alt. 1	5-110	Agrees with proposed rule. No written comment.	
2015-29	Nguyen, Paul (11-24-15)	No	Alt. 1	5-110	Expressed concern, through examples, that prosecutors are sending innocent people to prison and suffering no consequences.	
2016-256	Nguyen, Sang (2-28-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-191	Nielsen, James (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2016-279	Northcutt, Alex (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-272	O'Brien-Kovari, Nicholas (2-29-16)	No	Alt. 1	5-110	Prosecutor should not be called upon to be gatekeeper of what is material. If they are incorrect, the case may be dismissed.	
2016-313	Office of Chief Trial Counsel (OCTC), Jayne Kim (2-26-16)	Yes	Alt. 1	5-110	<p>OCTC's foremost concerns regarding any revisions to the Rules of Professional Conduct are that the rules protect the public and are clearly written so as to be understood by the membership and enforceable by OCTC. This comment is offered with those goals in mind.</p> <p>The proposed rule essentially tracks ABA Model Rule 3.8 and is consistent with established California discipline law. Additional clarification within the proposed rule would enhance notice to the membership and enforcement by this office.</p> <p>5-110(B) should specify when a prosecutor is obligated to make reasonable efforts to assure that an individual has been advised of his or her right to counsel. In many instances, this responsibility is addressed by police officers at the time of an</p>	

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					<p>arrest. A prosecutor may not have knowledge, let alone control, of these events. Police Dept's in California are generally independent of prosecutors' offices.</p> <p>Regarding 5-110(D), the requirement that disclosures be made "timely" is addressed in discussion point 3 which states that a "disclosure's timeliness will vary with the circumstances: and the rule "is not intended to impose timing requirements different from those established" by law. It may be advisable to clarify and state this concept in the text of the rule.</p> <p>5-110(D) requires disclosure of all information that "tends to negate" guilt or mitigate an offense. Discussion point number 3 then states that the disclosure obligation is "not limited to evidence or information that is material as defined by <i>Brady</i> ... and its progeny." The discussion item notwithstanding, language similar to that recommended in the proposed section has been interpreted differently in some jurisdictions.</p>	

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					<p>Consequently, it may be advisable to state the Commission's intention within the text of the rule itself, namely, that a prosecutor's duty to disclose is broader than that which is material as defined in <i>Brady</i>.<sup>2</sup> Additionally, the section should address whether the evidence and information to be disclosed includes that which may impeach or discredit a witness for the prosecution.</p> <p>Finally, section 5-110(D) states that a prosecutor must disclose all evidence or information "known to the prosecutor." It is not clear if this language refers to knowledge of the existence of evidence and information, or knowledge that the evidence and information tends to negate the guilt of the accused. Moreover, the section does not address a prosecutor's duty to search for exculpatory evidence or whether a failure to comply with the section based upon reckless conduct or gross negligence is a basis to find a violation for</p>	

<sup>2</sup> Presumably, the Commission's intention is also that a prosecutor's duty to disclose would not be limited by criminal discovery statutes.



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					disciplinary purposes.	
2016-261	Ogul, Michael (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-20	Olsman, Matthew (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-36	Or, Lany (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-208	Or, Lany (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-240	Orbelian, Wade (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-143	Oster, David (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-277	Otani, Kay (2-29-16)	No	Alt. 1	5-110	Proposed rule makes clear that prosecutor has an ethical duty as well as a legal duty to provide evidence.	
2016-229	Ourfalian, Vicky (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Proposed rule promotes justice, fairness, and transparency. It requires prosecutors to act as they already should – as administrators of justice.	

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2016-114	Paine, Autumn (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-150	Paparian, William (2-25-16)	No	Alt. 1	5-110	Agrees with Commission's proposed rule.	
2015-17	Pena, Katarina (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-255	Pernik, William (2-28-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-165	Perry, Michael (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Claims proposed rule comports to existing California law.	
2016-155	Petersen, Justin (2-25-16)	No	Alt. 1	5-110	Agrees with Commission's proposed rule.	
2016-207	Petrosino, Sharon (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-221	Poston, Amber (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-21	Povalitis, Leslie (11-24-15)	No	Alt. 1	5-110	Believes to ensure justice, prosecutor's duty needs to be expressed in a rule of conduct.	

Proposed Rule 5-110 Special Responsibilities of a Prosecutor Draft and/or Concept Synopsis of Public Comments						
No.	Commenter/Signatory	Comment on Behalf of Group?	Position <sup>1</sup>	Rule	Comment	RRC Response
2015-2	Pozzi, Kathleen (11-23-15)	No	Alt. 1	5-110	Boilerplate comment language. <sup>3</sup>	
2016-219	Proctor, Jennifer (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-308	Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association (PREC), Teresa Schmid (2-26-16)	Yes	Alt. 1	5-110	PREC supports the proposed amendments, and specifically opposed the so called “alternative 2” to proposed paragraph (D) of Rule 5-110.	
2016-138	Public Defenders for Racial Justice, Rebecca Susan Young (2-24-16)	Yes	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Likes bright line rule.	
2016-319	Ra, Sue (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-242	Ramirez, Joseph (2-26-16)	No	Alt. 1	5-110	Proposed rule addresses nationwide problems associated with disclosure. Proposed rule simply requires prosecutors to do what they are sworn to do.	
2016-275	Ramos, Carlos (2-29-16)	No	Alt. 1	5-110	Proposes that rule should include a definition of what is “timely” and that prosecutors should only be allowed to bring charges when	

<sup>3</sup> Recommends adoption of proposed rule 5-110(D), which clearly explains the duty of prosecutors to disclose all exculpatory evidence regardless of materiality, and recommends rejection of the alternative draft (ALT 2).

Proposed Rule 5-110 Special Responsibilities of a Prosecutor Draft and/or Concept Synopsis of Public Comments						
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					evidence supports guilt beyond reasonable doubt, not just probable cause.	
2016-133	Razzaq, Hadi (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-153	Rivera, Angelica (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-11	Robinson, Kevin (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-26	Robinson, Kevin (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-167	Robinson, Kevin (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-303	Rodriguez, James (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-238	Rodriguez, Mario (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-257	Rodriguez, Richard (2-28-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-210	Rogers, Heather (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-262	Ross, Julian (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2016-157	Roth-Furbush, Samra (2-25-16)	No	Alt. 1	5-110	Agrees with Commission's proposed rule.	
2016-181	Ruby, Sarah (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-111	Rudich, Kevin (2-24-16)	No	Alt. 1	5-110	Approves of the Commission's proposed rule.	
2016-137	Russell, Matthew (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-196	Rutgers, Gerritt (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-237	Ryan (2-25-16)	No	Alt. 1	5-110	Our justice system relies on honesty and accountability.	
2016-266	Saba, Natalie (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-42	Saban, Panteha (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-198	Saban, Panteha (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-1	Sable, Norman (11-23-15)	No	NA	5-110	Disagrees with use of "shall refrain" and suggests retaining the phrase "shall not."	
2016-312	Sakoh, Miyuki (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

**Proposed Rule 5-110 Special Responsibilities of a Prosecutor Draft and/or Concept  
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<b>No.</b>	<b>Commenter/Signatory</b>	<b>Comment on Behalf of Group?</b>	<b>Position<sup>1</sup></b>	<b>Rule</b>	<b>Comment</b>	<b>RRC Response</b>
2016-66	San Diego County Bar Association, Heather Riley (2-10-16)	Yes	NA	5-110	<p>Believes both versions of (D) have ambiguities that need to be addressed for the rule to be a clear standard that succinctly states a lawyer's obligation with clarity and precision.</p> <p>Believes the language "evidence or information known to the prosecutor" is ambiguous and that it is unclear whether the rule is intended to reach only information "known" to the prosecutor and not what a prosecutor "should know." See suggested language in comment.</p> <p>It is unclear what constitutes "evidence or information...that tends to negate the guilt of the accused or mitigates the offense..." and whether the rule is intended to require disclosure of impeachment evidence. See suggested language in comment.</p> <p>Alt 2 language "as interpreted by relevant case law" does not create a clear standard.</p> <p>Suggests a statement permitting lawyers to look to decisions in jurisdictions with analogous rules for guidance interpreting the rule.</p>	
2016-324	San Diego County District Attorney (Bonnie Dumanis)	No	NA	5-110	The proposed rule is not only inconsistent with both constitutional and statutory law	

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	(2-02-16)				<p>related to criminal discovery in California, but also creates a standard that will place prosecutors in jeopardy of violating ethical rules as it lacks clarity and includes terms not defined by case law.</p> <p>The language of proposed paragraph (D) uses the phrase “mitigate the defense” which can be so broadly interpreted as to put prosecutors in jeopardy over decisions that are not clearly defined by law.</p> <p>Proposed paragraph (B) asks prosecutors to make “reasonable efforts” to ensure that criminal defendants have been advised of the rights to counsel and have been given a “reasonable opportunity to obtain counsel.” This is a function of law enforcement and not the role of the prosecutor. The proposed rule does not provide clear guidance as to how a prosecutor would defend a “reasonable effort.”</p> <p>Proposed paragraph (F) misunderstands the relationship that prosecutors have with law</p>	

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					enforcement and imposes an unrealistic and unnecessary burden.	
2016-141	San Francisco Public Defender Racial Justice Committee, Demarris Evans (2-24-16)	Yes	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-268	San Francisco Public Defender's Office, Danielle Harris (2-29-16)	Yes	Alt. 1	5-110	<p>The State Bar should approved proposed rule 5-110(D) as recommended by the Commission because the proposed rule clearly explains the duty of prosecutors to disclose all exculpatory evidence, as California statute and decisional law requires. In my experience, state discovery violations are rampant. Juries should hear all significant evidence, as determined by the court, not solely by prosecutors.</p> <p>5-110(A) should be rejected because it eliminates the phrase "or should know;" and removes any temporal reporting requirement, such as "timely." An individual prosecutor must be held to the standard of a reasonable prosecutor. Maintaining the "knows or should know" language insures as much.</p>	



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<b>No.</b>	<b>Commenter/Signatory</b>	<b>Comment on Behalf of Group?</b>	<b>Position<sup>1</sup></b>	<b>Rule</b>	<b>Comment</b>	<b>RRC Response</b>
					The requirement of “prompt” reporting when probable cause does not exist makes clear that the state has a duty to act quickly to ensure that no one faces criminal charges when probable cause is lacking. The proposed rule waters down an already minimal obligation and should be rejected.	
2015-16	San Jose Public Defender, Malorie Street (11-24-15)	Yes	Alt. 1	5-110	Agrees with proposed rule as necessary to ensure fairness of the criminal justice system.	
2016-101	Sandecki, Sheri (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-188	Sanders, Neal (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-9	Santa Clara County Public Defender, Jung Le (11-24-15)	Yes	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-144	Santana, Jesse (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-223	Scheidel, Kathleen (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-249	Schramm, Bethany (2-26-16)	No	Alt. 1	5-110	Agrees with Commission’s proposed rule.	
2016-267	Schwarzbach, Zachariah (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2016-83	Scofield, Robert (2-24-16)	No	Alt. 1	5-110	Agrees with proposed rule as the proper language of Brady as it should be applied at the trial court level.	
2016-69	Sevilla, Charles (2-5-16)	No	Alt. 1	5-110	Agrees with proposed rule as necessary to ensure that disclosures are made regardless of materiality. Despite recognition that these duties exist, concerned that the view of many prosecutors is that the duty is limited to material evidence.	
2016-113	Shea, George (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2. Claims that proposed rule comports with existing law.	
2016-182	Shear, Andrew (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-57	Shena, Sarah (12-1-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-7	Silver, Damon (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-90a	Silver, Damon (2-24-16)	No	Alt. 1	5-110	Approves of the Commission's proposed rule.	

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2016-185	Smith, Colin (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-321	Smith, Tenette (2-29-16)	No	Alt. 1	5-110	Supports Commission's proposed rule.	
2016-222	Snyder, Amanda (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-218	Sok, Curtis (2-25-16)	No	Alt. 1	5-110	Proposed rule ensures that prosecutors will be strictly accountable for administering justice as opposed to winning.	
2015-23	Solano County Public Defender, Lesli Caldwell (11-24-15)	Yes	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-291	Solga, Joseph (2-26-16)	No	Alt. 1	5-110	Agrees with Commission's proposed rule.	
2015-44	Soloman, Rachel (11-25-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-209	Solomon, Ilona (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-46	Sonoma County Public Defender, Michael Perry (11-25-15)	Yes	Alt. 1	5-110	Agrees with the proposed rule as a needed requirement, noting that most other states already follow the same rule.	
2016-245	Sorensen, Jason (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	

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2015-14	Sotorosen, Matthew (11-24-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-164	Spector, Simone (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-283	Stanley-Ngomo, Armilla (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-58	Start, Christine (12-2-15)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2015-56	Streets, Phoenix (11-30-15)	No	Alt. 1	5-110	Believes proposed rule will assist in ensuring fair treatment and improving the relationship between law enforcement and the community.	
2015-53	Swarz, Sean (11-30-15)	No	Alt. 1	5-110	Expressed concern, through examples, that leaving prosecutors with discretion re Brady obligations has resulted in failures of prosecutors to disclose all exculpatory evidence.	
2016-244	Taylor, John (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-233	Templeton, Chet (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  Prosecutors should not be the ones who determine whether something is material.	

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2016-280	Theiss, Sara (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-239	Thiagarajah, Niranjan Fred (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-85	US Dept. of Justice, Stacy Ludwig (2-24-16)	Yes	Alt. 2	5-110	U.S. DOJ disagrees with rule as follows: sub (D) would change federal prosecutors' duties in a manner rejected by the Federal Rules Committee; rule's departure from caselaw-based standard creates ambiguity; proposed rule is at odds with federal prosecutors' legal obligations and provides no mechanism to be in compliance with both; sub (G) doesn't distinguish between prosecutors who are still involved in a case or work in the same office and those who have moved to another district; sub (E) too greatly limits federal prosecutors' and grand juries' ability to investigate and prosecute criminal conduct. Provides alternative rule drafts that comport to concerns listed. Provides that if alternatives are not adopted, there should be a men rea requirement added to proposed rule.	

**Proposed Rule 5-110 Special Responsibilities of a Prosecutor** Draft and/or Concept  
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No.	Commenter/Signatory	Comment on Behalf of Group?	Position <sup>1</sup>	Rule	Comment	RRC Response
2016-63	Valdez, T. David (1-19-16)	No	Alt. 1	5-110	Commenter provided personal story as convicted criminal defendant stating prosecution failed to turn over exculpatory evidence.	
2016-315	VanOosting, Peter (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-146	Venegas, Armando R. (2-24-16)	No	Alt. 1	5-110	Agrees with proposed rule and claims that it will even out the playing field.	
2016-130	Verlato, Richard C. (2-24-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.  CDAA should not be “loop-hole seekers.”	
2016-204	Villalobos, Christina (2-25-16)	No	Alt. 1	5-110	Proposed rule would ensure that prosecution of cases would proceed more smoothly and would reduce opportunities for defendants to get their cases dismissed.	
2015-60	Vinegrad, Paul (12-5-15)	No	NA	5-110	Disagrees with proposed rule. Expressed concern that State Bar lacks authority to enact a rule that alters the discovery rules in criminal cases. See exclusivity provision in Pen. Code § 1054(e).	
2015-5	Voogd, Anthony (11-24-15)	No	NA	5-110	Suggests defining “prosecutor” and “prosecutorial discretion.” Believes that for rule 5-110 to be effective the Rules also need to adopt model rules 5.1-5.2 re supervisory and subordinate	

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					lawyers. Suggests adoption of all ABA model rules. Concerned that proposed rule may conflict with existing statutory law.	
2016-292	Walters, Phillip (2-26-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-285	Wasserman, Michael (2-26-16)	No	Alt. 1	5-110	Justice system attorneys are tasked with seeking justice. Withholding evidence is common. Proposed rule would enhance prosecutor's role as seeker of justice.	
2016-79	Webber, Stephen (2-6-16)	No	Alt. 1	5-110	Attorney agrees with proposed rule. Believes that the rule should be expanded to address the following issues: potential prosecutorial conflicts regarding grand jury proceedings and using public funds for prosecutors' vendettas. Attorney likewise suggests that violation of the rule should result in mandatory discipline. Attorney writes that rule should be expanded to address when prosecutor must cease prosecution and dismiss charges in light of new evidence. Attorney gives numerous examples of prosecutors continuing to pursue charges despite lacking probable cause.	

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2016-205	Weir, Jon C. (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-271	Welch, Jennifer (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-192	Wetmore, Matthew (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-226	Wright, Laura (2-25-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-316	Yaroshefsky, Bruce Green & Ellen (2-29-16)	No	Alt. 1	5-110	<p>An ethics rule based on Rule 3.8(d), such as ALT 1, would not conflict with federal and state law. Federal prosecutors already comply with disclosure law drawn from various sources, including case law, statutes and rules of criminal procedure. The ethics rule does not excuse prosecutors from complying with other disclosure obligations under the law or otherwise conflict with them, but builds upon prosecutors' other disclosure obligations.</p> <p>There is nothing anomalous or troubling about a state ethics rule that is more demanding than other law on the subject. In general, ethics rules go beyond existing law, rather than merely</p>	



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					<p>restating or codifying existing law or incorporating it by references. (See, CRPC 2-100; ABA 4.2).</p> <p>Federal prosecutors' legal obligation to comply with state ethics rules that supplement existing legal restrictions has two undeniable bases. First, the obligation is generally established by local rules of the federal courts that make clear the state ethics rules applicable to attorneys in federal judicial proceedings. Second, and wholly apart from the federal court rules, the obligation is established clearly and equivocally by federal statute (see, the McDade Act, 28 USC § 530B)</p>	
2016-293	Yellen, Amy (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-286	Yolo County Public Defender's Office, Tracie Olson (2-26-16)	Yes	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-265	Yu, Linda (2-29-16)	No	Alt. 1	5-110	Boilerplate comment language. See footnote 2.	
2016-236	Zaky, Negad (2-25-16)	No	Alt. 1	5-110	Proposed rule creates clear standard that protects both prosecutors and defendants.	