

Cardona Proposed Revised Rule 5-110(D)

Rule 5-110(D)

Proposed Alt-1 (redline to CA Supreme Court's proposed alternative)
(cleanup plus adds explanation of cumulative in discussion paragraph [3])

The prosecutor in a criminal case shall:

* * *

(D) Make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal. This obligation includes the duty to disclose information that a prosecutor knows or reasonably should know casts significant doubt on the accuracy or admissibility of witness testimony or other evidence on which the prosecution intends to rely;

* * *

[3] The disclosure obligations in paragraph (D) are not limited to evidence or information that is material as defined by *Brady v. Maryland* (1963) 373 U.S. 83 [83 S. Ct. 1194] and its progeny. Nevertheless, paragraph (D) rule 5-110 is not intended to require disclosure of ~~cumulative information~~ or information protected from disclosure by federal or California laws and rules, as interpreted by case law or court orders, or information that is cumulative, that is, substantially the same as information that the prosecutor knows already has been disclosed to or already is in the possession of the defense. Moreover, nothing in this rule is intended to be applied in a manner inconsistent with statutory and constitutional provisions governing discovery in California courts. A disclosure's timeliness will vary with the circumstances, and paragraph (D) rule 5-110 is not intended to impose timing requirements different from those established by statutes, procedural rules, court orders, and case law interpreting those authorities and the California and federal constitutions.

[4] The exception in paragraph (D) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.