

From: Michael Ogul [mailto:msogul@comcast.net]
Sent: Wednesday, May 24, 2017 5:00 PM
To: McCurdy, Lauren; Difuntorum, Randall
Cc: 'Ogul, Michael S'
Subject: State Bar Rules Revision Commission meeting tomorrow, May 25--last minute submission

Dear Mr. Difuntorum and Ms. McCurdy,

Please accept my apologies for this last minute submission in response to the new materials that have been posted in the last 24 hours, particularly the proposed modifications submitted by the State Public Defender and George Cardona. I intend to participate by telephone tomorrow but wanted to make an attempt to provide this submission to the Commission in advance.

Specifically, we are offering the following alternative to the last sentence of Rule 5-110, subdivision (d), as proposed by the California Supreme Court, so that the subdivision reads in its entirety as follows:

(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 or mitigates, mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigating information known to the prosecutor that the prosecutor knows or reasonably should know or mitigates 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 the prosecutor knows or reasonably should know casts significant doubt on the accuracy or admissibility of witness testimony or other evidence ~~on which disclosed by the prosecution intends to rely, and any other~~ evidence a prosecutor knows or reasonably should know is favorable to the defense; and

...

Our changes are indicated by ~~striketrough~~ (deletions from the language tendered by the California Supreme Court) and underscore (additions). The first underscore incorporates the suggestion of George Cardona earlier today; the second underscore is our suggested insertion; and the third was proposed by the State Public Defender yesterday. The ~~striketrough~~ suggested deletions are also being proposed by the State Public Defender.

Thank you for your assistance,

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