

JAN 08 2019 JC

At 1:22 P.M.  
Velva L. Price, District Clerk

**STANDING ORDER RELATING TO**  
**THE DISTRICT ATTORNEY'S DISCLOSURE FILES**

To facilitate the orderly and efficient compliance by the State of Texas with its disclosure responsibilities under Texas Code of Criminal Procedure article 39.14 and the *Brady* case law, the District Courts of Travis County hereby issue this standing order.

**Applicability and interpretation**

1. This standing order applies in every criminal proceeding held in any District Court that is located in Travis County, Texas. This order shall take effect in each such Court on the date signed below by the Presiding Judge of that Court.
2. All provisions of this standing order are to be construed and applied in a manner consistent with Texas law, including article 39.14 of the Texas Code of Criminal Procedure.

**The State's Disclosure Files**

3. The Travis County District Attorney's Office represents that it currently possesses a group of files that are generally referred to as "Disclosure Files." The Disclosure Files are maintained for the purpose of storing information and materials that are thought to have potential exculpatory, impeachment, and/or mitigation value in relation to one or more witnesses employed by law enforcement and who might be called upon to testify for that prosecutorial agency on a recurring basis in the future.
4. The State has no duty to seek out exculpatory evidence independently on a defendant's behalf or to furnish a defendant with exculpatory or mitigating evidence that is fully accessible to the defendant from other sources. *Harm v. State*, 183 S.W.3d 403, 407 (Tex. Crim. App. 2006). Under article 39.14, however, the State does have a duty to "disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged." TEX. CODE CRIM. PROC. ART. 39.14(h). Similar duties have been recognized in *Brady* and its progeny. *See Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Bagley*, 473 U.S. 667 (1985).
5. Consistent with the duties described above, The Travis County District Attorney's Office represents that it intends to disclose the contents of all appropriate Disclosure Files to defense counsel in each pending criminal

- case where and to the extent that such disclosure is determined by that agency to be warranted.
6. In any situation where the Travis County District Attorney's Office determines that such an item or information, or any portion of a Disclosure File, is potentially protected from disclosure or subject to a claim of privilege by the State or by a third party, then that agency may withhold or redact the arguably privileged item or information. If any withholding or redaction occurs in such a situation, the State should inform the defense attorney that an item or information or a portion thereof has been withheld or redacted, and the defense attorney may move the Court for an order compelling disclosure of the withheld or redacted item or information.
  7. The Travis County District Attorney's Office has represented that its Disclosure Files often contain information about witnesses that might be considered personal and/or confidential in nature and that the agency seeks to prevent the disclosure of such information to third parties to whom that agency has no duty of disclosure under article 39.14 or the *Brady* case law.
  8. The Travis County District Attorney's Office does not, by making such disclosures, make any representation as to the authenticity of the disclosed materials or as to the veracity of the statements contained therein. Nor does the Travis County District Attorney's Office make any representation or concession as to the admissibility of such materials or information.
  9. The District Courts of Travis County do not, by issuing this standing order, make any finding as to whether any particular Disclosure File, or any item therein, contains information that actually has exculpatory, impeachment, or mitigation value in any case. This order does not make a finding as to authenticity or admissibility.

**Responsibilities of defense counsel**

10. In situations where materials and information in a Disclosure File are disclosed to a defense attorney, the District Courts of Travis County prohibit further disclosure of such materials or information by defense counsel and other members of the defense team, to third parties to whom the State has no duty of disclosure under article 39.14 or the *Brady* case law.
11. In such situations, the responsibilities of that defense attorney in relation to such materials and information are governed by article 39.14. Each

defense attorney to whom such a disclosure is made is ordered to comply with article 39.14, which includes the following provisions:

**Art. 39.14. Discovery.**

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(e) Except as provided by Subsection (f), the defendant, the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the defendant **may not** disclose to a third party any documents, evidence, materials, or witness statements received from the state under this article unless:

- (1) a court orders the disclosure upon a showing of good cause after notice and hearing after considering the security and privacy interests of any victim or witness; or
- (2) the documents, evidence, materials, or witness statements have already been publicly disclosed.

(f) The attorney representing the defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant, may allow a defendant, witness, or prospective witness to view the information provided under this article, but may not allow that person to have copies of the information provided, other than a copy of the witness's own statement. Before allowing that person to view a document or the witness statement of another under this subsection, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement. For purposes of this article, the defendant may not be the agent for the attorney representing the defendant.

TEX. CODE CRIM. PROC. ART. 39.14(e), (f).

12. After receiving materials contained in one or more Disclosure Files, a defense attorney must ensure that all such materials in the attorney's possession are stored in a secure location except when the materials are actively being reviewed or utilized.
13. After receiving materials contained in one or more Disclosure Files, a defense attorney may use those materials, and the information contained therein, in any manner that the attorney deems appropriate in relation to

the attorney's representation of the defendant (including, for example, during pretrial proceedings, trial preparation, trial proceedings, direct appeal, habeas proceedings, and proceeding under Chapter 64), **provided** (a) that such use does not violate article 39.14, (b) that such use does not violate the terms of this standing order, and (c) that such use does not violate any other statute, rule, or order.

14. Before disclosing the contents of any Disclosure File to any investigator, expert, consulting legal counsel, or other agent of defense counsel, the defense attorney must warn that person of that person's duty, under article 39.14, to refrain from disclosing the information contained therein to any third party.
15. Before allowing the defendant, any witness, or any prospective witness to view the contents of any Disclosure File, the defense attorney must warn that person of that person's duty, under article 39.14, to refrain from disclosing the information contained therein to any third party.

**Violation of this order**

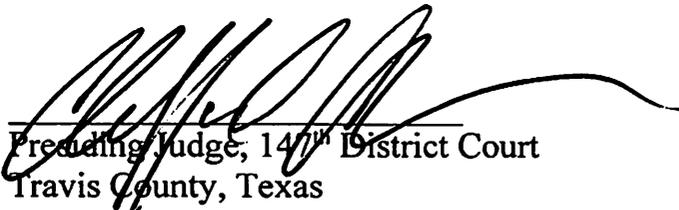
16. Any person who violates any provision of this standing order may be subject to any and all sanctions allowed by law, including a finding of contempt of court. Contempt may be punished by confinement in jail for up to six months and a fine of up to \$500 for each violation. *See* TEX. GOV'T CODE § 21.002(b).

AGREED.

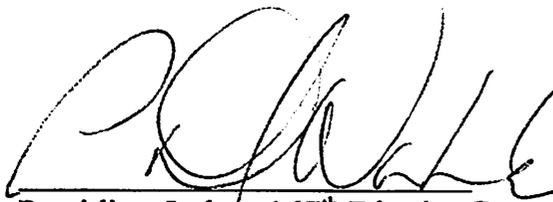
  
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Andy Casey  
Presiding Director, Austin Criminal Defense  
Lawyers Association

12-14-18  
Date

IT IS SO ORDERED.

  
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Presiding Judge, 147<sup>th</sup> District Court  
Travis County, Texas

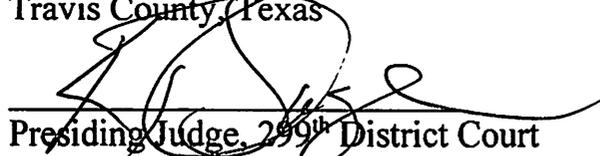
12-14-18  
Date



Presiding Judge, 167<sup>th</sup> District Court  
Travis County, Texas

12-14-18

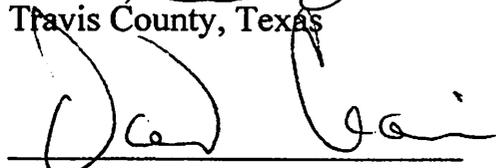
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Presiding Judge, 299<sup>th</sup> District Court  
Travis County, Texas

12-14-18

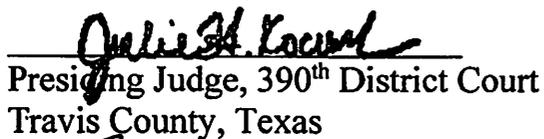
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Presiding Judge, 331<sup>st</sup> District Court  
Travis County, Texas

12-14-18

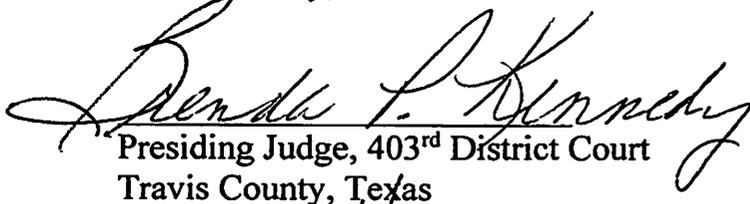
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Presiding Judge, 390<sup>th</sup> District Court  
Travis County, Texas

12-14-18

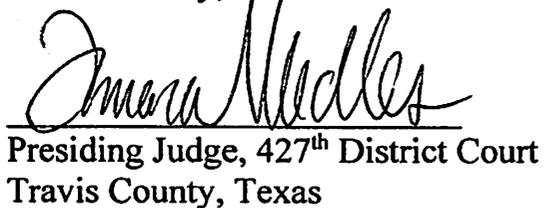
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Presiding Judge, 403<sup>rd</sup> District Court  
Travis County, Texas

12-14-18

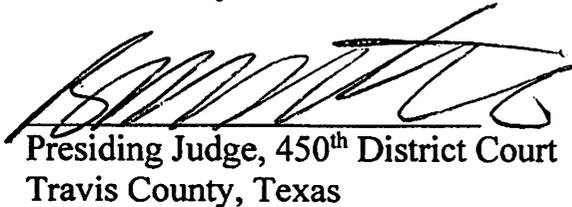
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Presiding Judge, 427<sup>th</sup> District Court  
Travis County, Texas

12-14-18

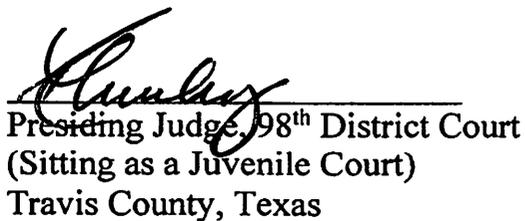
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Presiding Judge, 450<sup>th</sup> District Court  
Travis County, Texas

12-14-18

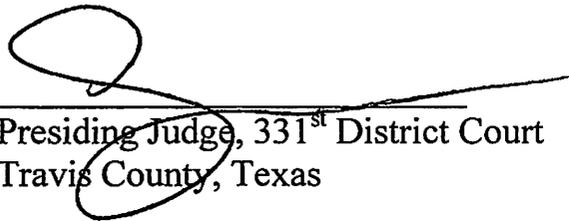
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Presiding Judge, 98<sup>th</sup> District Court  
(Sitting as a Juvenile Court)  
Travis County, Texas

1-7-2019

Date

  
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Presiding Judge, 331<sup>st</sup> District Court  
Travis County, Texas

1/8/19  
Date