

**TOMPKINS COUNTY DISTRICT ATTORNEY’S OFFICE
ETHICS POLICY**

The prosecutor “is the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” Berger v. United States, 295 U.S. 78, 88 (1935).

A. Ethical Conduct

1. A prosecutor’s ethics and professional conduct are paramount to his or her position. A prosecutor’s first duty is to seek justice and the truth. Any conduct contrary to these principles will be considered a fundamental issue requiring immediate resolution. While we recognize that there is a difference between *prosecutorial misconduct* and *prosecutorial error*, please keep in mind that often, this distinction may not always be recognized by appellate courts, defense attorneys, the media and the public.
2. All Assistant District Attorneys must read and internalize the most current edition of the DAASNY Ethical Guide, “Do the Right Thing.” Each Assistant District Attorney must sign a statement that he or she has read the guide and is familiar with its contents.
3. Additionally, the ethical and professional responsibilities of a prosecutor are detailed in the National Prosecution Standards, published by the National District Attorney’s Association. All Assistant District Attorneys should be familiar with these standards.
4. Assistant District Attorneys shall ensure that any case that is indicted is properly charged and legally supported by evidence admissible at trial. Assistant District Attorneys shall

constantly evaluate their cases and identify any change in circumstances to ensure that justice is done in each and every case.

5. All Assistant District Attorneys are individually responsible for ensuring that exculpatory evidence such as Brady/Giglio material is identified and provided to the defense. This notification and turnover of exculpatory material must be documented either in writing to both the Defense Attorney and the Court, or on the record. **The specific protocol for Brady/Giglio material is annexed hereto and made a part hereof as Exhibit A.**
6. If, at any time during the handling of your case, you discover exculpatory evidence such as Brady/Giglio material, you are to immediately notify the District Attorney. If you are unsure whether something qualifies as Brady/Giglio material, you are to immediately discuss the circumstances with the District Attorney. If after such discussion, there remains uncertainty as to the nature of the material, you will be required to make a disclosure.
7. Remember that “use of force” reports are Rosario material. The prosecutor should review all “use of force” reports to ensure that he or she is aware of the entirety of the officer’s conduct in the arrest as well as defendant’s conduct and any admissions or statements he or she may have made during the course of the arrest. The prosecutor should also personally speak with any involved officers and get their input on the incident as well as any disposition.

B. Ethics Process and the Ethics Review Panel

1. Whenever an Assistant District Attorney’s ethical conduct is called into question, by a trial judge, a defense attorney, an appellate court, the media or a member of the public, that allegation or claim will immediately be brought to the attention of the District Attorney. An Ethics Review Panel consisting, minimally, of the District Attorney and Deputy District

Attorney, will be convened to review the allegations. If the claim is in the form of “prosecutorial misconduct” in an appellate court decision, that court opinion will be compared to the issues raised in the appellant’s briefs, the People’s response brief and the trial transcript. The Assistant District Attorney will meet with the panel and be given the opportunity to explain his or her conduct

2. Any appellate court decision citing prosecutorial misconduct will be reviewed with the Assistant District Attorney. That Assistant District Attorney will be provided any necessary training to prevent similar conduct in the future. This will be documented in writing and placed in the Assistant District Attorney’s personnel file.
3. If any conduct rises to the level of intentional, reckless or negligent conduct that is so egregious that it violates the fundamental principles of our duty to serve justice, or that goes to the character, credibility and/or integrity of an Assistant District Attorney to the extent that the District Attorney does not trust him or her to effectively carry out his or her duties as a prosecutor, that Assistant District Attorney will be terminated.
4. If the alleged conduct proves to be false or unsubstantiated, the District Attorney will personally respond to the source of the allegation.
5. In the event that an Assistant District Attorney is accused of misconduct, that Assistant District Attorney has an obligation to self-report to the District Attorney.

C. New York State District Attorney’s Association Code of Conduct for Political Conduct for Political Activity

1. The Office of the District Attorney, under the Constitution and laws of New York State, is an elected position. District Attorneys must regularly submit their record of performance to the

electorate. The District Attorney is therefore involved directly in the political process. Thus, it is reasonable and proper for District Attorneys and members of their staff to engage in activities that do not compromise their office's efficiency or integrity, or interfere with the professional responsibilities and duties of their offices.

2. Assistant District Attorneys may engage in the following conduct:

- a) Register to vote and vote.
- b) Have membership in a political party.
- c) Contribute money to political parties, organizations and/or committees.
- d) Attend political/social events.
- e) Participate in community and civic organizations that have no partisan purposes.
- f) Sign political petitions as an individual.

3. District Attorneys and Assistant District Attorneys shall not:

- a) Be a member or serve as an official of any political committee, club, organization or group having a political purpose.
- b) Endorse candidates, except that Assistant District Attorneys shall be permitted to engage in political activity in support of the re-election of the District Attorney by whom they are employed.
- c) While attending a political/social function, District Attorneys or Assistant District Attorneys shall not speak at such functions; they shall not publicize their attendance at such functions; nor shall they act in a manner which could be interpreted as lending the prestige and weight of their office to the political party or function. However, this shall not prohibit normal political activity during the course of a campaign year.

- d) Coerce or improperly influence any individual to make a financial contribution to a political party or campaign committee or to engage in political activities.
- e) Engage in any political activity during normal business hours or during the course of the performance of their official duties or use office supplies, equipment, facilities or resources for political purposes.
- f) Misuse their public position for the purpose of obstructing or furthering the political activities of any political party or candidate.

4. The above activities are reasonable and ethical, and are consistent with the impartiality of the District Attorney's office. The above activities should also help District Attorneys maintain a sense of public confidence in the non-partisan nature of the District Attorney's office. Such conduct also guarantees the constitutional rights of prosecutors and their assistants in the exercise of their elective franchise.

5. In the event that an Assistant District Attorney is accused of misconduct, that Assistant District Attorney has an obligation to self-report to the District Attorney.

D. Policy for Ethically Dealing with the Media

If a member of the media asks you a question about a case you are handling, you are allowed to respond appropriately. You are subject to parameters established in the New York Fair Trial Free Press Conference Principles and Guidelines (1994) and the National Prosecution Standards. Please keep in mind that it is unethical to "try" your case in the media and your comments should be restrained.

(a) A "public statement" is any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication or media, including social media. An extrajudicial statement is any oral, written, or visual presentation not made either in a courtroom

during criminal proceedings or in court filings or correspondence with the court or counsel regarding criminal proceedings.

(b) The prosecutor's public statements about the judiciary, jurors, other lawyers, or the criminal justice system should be respectful even if expressing disagreement.

(c) The prosecutor should not make, cause to be made, or authorize or condone the making of, a public statement that the prosecutor knows or reasonably should know will have a substantial likelihood of materially prejudicing a criminal proceeding or heightening public condemnation of the accused, but the prosecutor may make statements that inform the public of the nature and extent of the prosecutor's or law enforcement actions and serve a legitimate law enforcement purpose. The prosecutor may make a public statement explaining why criminal charges have been declined or dismissed, but must take care not to imply guilt or otherwise prejudice the interests of victims, witnesses or subjects of an investigation.

(d) A prosecutor should not place statements or evidence into the court record to circumvent this policy.

(e) The prosecutor should exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor from making an extrajudicial statement or providing non-public information that the prosecutor would be prohibited from making or providing under this policy or other applicable rules or law.

(f) The prosecutor may respond to public statements from any source in order to protect the prosecution's legitimate official interests, unless there is a substantial likelihood of materially prejudicing a criminal proceeding, in which case the prosecutor should approach defense counsel

or a court for relief. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(g) The prosecutor has duties of confidentiality and loyalty, and should not secretly or anonymously provide non-public information to the media, on or off the record, without appropriate authorization.

(h) The prosecutor should not allow prosecutorial judgment to be influenced by a personal interest in potential media contacts or attention.

(i) During the pendency of a criminal matter, the prosecutor should not re-enact, or assist law enforcement in re-enacting, law enforcement events for the media. Absent a legitimate law enforcement purpose, the prosecutor should not display the accused for the media, nor should the prosecutor invite media presence during investigative actions without careful consideration of the interests of all involved, including suspects, defendants, and the public. However, a prosecutor may reasonably accommodate media requests for access to public information and events.

E. Duty to Report to Grievance Committee

Assistant District Attorneys have an obligation to report violations of the disciplinary rules to the Attorney Grievance Committee of the State Bar Association. Any criminal offense, conduct or violation committed by a member of the Bar should be immediately reported to the District Attorney.

F. Duty to Report Criminal Convictions

Assistant District Attorneys also have an ethical responsibility to report criminal convictions of any defendant who holds any other state-issued license to the licensing boards or disciplinary

committees of those professions. In addition to attorneys, this includes nurses, doctors, teachers or other professions where licenses are required for practice.

G. Personal gifts

Gifts may not be solicited, nor accepted from members of the public, the defense bar, the judiciary, law enforcement agencies/members, witnesses, crime victims and/or their family members or any other person or group. This prohibition applies to all offers or gestures of gifting that occur within the context of your employment as a member of the District Attorney’s Office and must be politely declined.

I, _____, hereby state that I have received a copy of the Tompkins County District Attorney’s Office Ethics Policy, as well as a copy of “The Right Thing”, Ethical Guidelines for Prosecutors. Furthermore, I have read both documents, and understand my duties and responsibilities as a Prosecutor for Tompkins County.

Date: _____

Assistant District Attorney

BRADY AND GIGLIO MATERIAL
Tompkins County District Attorney's Office

In furtherance of our continuing duty to fully and fairly disclose material to the defense pursuant to Giglio v. U.S., 405 U.S. 150 (1972), Brady v. Maryland, 373 U.S. 83 (1963), United States v. Agurs, 427 U.S. 97 (1976) and the New York Rules of Professional Conduct, 22NYCRR part 1200 (2009), the following is provided to Assistant District Attorneys and is intended to be used as a reference aid and reminder when reviewing criminal cases.

A particular criminal case may or may not contain the items enumerated in the categories of potential materials referenced below. Where necessary however, prosecutors should always seek to affirmatively resolve the existence or non-existence of applicable items. What follows is not intended to include every possible scenario whereby material subject to disclosure might exist.

I. Misidentifications, Non-Identifications, and Other Suspects

1. Has anyone identified someone other than the accused as the perpetrator of the crime alleged in any of the following?
 - A. Photographic display
 - B. Photographic array
 - C. Street encounter/show up
 - D. Line-up
 - E. Non-police arranged viewing
 - F. By name
 - G. Other

2. Has anyone failed to identify the accused as the perpetrator of the crime alleged in any of the following?
 - A. Photographic display
 - B. Photographic array
 - C. Street encounter/show up
 - D. Line-up
 - E. Non-police arranged viewing
 - F. Other

3. Has anyone indicated that an accused did not commit the crime alleged?

4. Did the police stop, question, or arrest any suspect other than the accused in connection with the crime alleged?

5. Did the police suspect any person other than the accused as the perpetrator of the crime alleged?

6. Did the police conduct any of the following identification procedures with another suspect in connection with this case?

- A. Photo array
- B. Show up
- C. Line-up
- D. Other

7. Is there scientific or other evidence that tends to implicate someone else?

8. Is there scientific or other evidence that fails to implicate the accused under circumstances in which it would be expected to implicate him?

II. Victim/Witness Services

1. Has any witness received assistance from DA's Office staff with the NYS Crime Victim's Assistance Board?

2. Has any witness received services or counseling from the District Attorney's Office?

III. Material Variances in Witness's Statements

Has any witness/cooperator ever:

- A. Denied witnessing the crime alleged?
- B. Denied that the alleged crime occurred?
- C. Denied that the accused committed the crime alleged?
- D. Provided a version of events that corroborates, in whole or in part, the version given by the accused?
- E. Overstated or understated the facts of the crime alleged?
- F. Provided a version of events that varies materially from their expected trial testimony?
- G. Denied participating in the crime?
- H. Minimized their role in the crime?

IV. Benefits to a Witness or Third Party (Express or Implied)

1. Has any witness been:

- A. Offered or given a reduced plea?
- B. Offered or given immunity?
- C. Offered or given a non-prosecution agreement?
- D. Offered or given a reduced sentence?
- E. Offered or given a letter to other law enforcement entity detailing their assistance?
- F. Offered or given a letter to other law enforcement entity making a recommendation on their behalf?
- G. Given money in connection with the witness's testimony or cooperation?
- H. Paid expenses or fees (including witness fees)?

- I. Offered or received immigration assistance?
- J. Relocated or received housing assistance?
- K. Other benefits

2. At the request of, or on behalf of a witness, has any third party been:

- A. Offered or given a reduced plea?
- B. Offered or given immunity?
- C. Offered or given a non-prosecution agreement?
- D. Offered or given a reduced sentence?
- E. Offered or given a letter to other law enforcement detailing their assistance?
- F. Offered or given a letter to other law enforcement making a recommendation on their behalf?
- G. Given money in connection with the witness's testimony or cooperation?
- H. Paid expenses or fees (including witness fees)?
- I. Offered or received immigration assistance?
- J. Relocated or received housing assistance?
- K. Other benefits

V. Known Acts Which Adversely Affect Credibility

- 1. Does any witness have a criminal history, to include juvenile adjudications?
- 2. Does any witness have a pending criminal charge?
- 3. Are you aware of any witness that has engaged in past acts that reflected dishonesty (regardless of whether the act constituted a crime or resulted in an arrest or conviction)?
- 4. Are you aware of any information that would tend to cast doubt upon a witness's ability to accurately perceive, recall, or relate events they have witnessed?
- 5. Are you aware of any witness involved in this case against whom there has there been a judicially adverse credibility finding?
- 6. Are any police officers involved in the case on modified duty?
- 7. Where threats, express or implied, direct or indirect, or other coercive measures directed against any witness, such as threats of criminal prosecution or investigation or potential prosecution, any probationary, parole, deferred prosecution, child protective services investigation, or custodial status of the witness or any civil, tax court, court of claims, administrative, or other pending or potential legal disputes or transactions with the prosecution or over which the prosecution has a real, apparent, or perceived influence.
- 8. Are you aware of any founded disciplinary actions/punishments to which a police witness has been subjected by their agency?

VI. Mental and Physical Health Issues

- 1. Does any witness have a mental health condition which might impair the witness's ability to perceive, recall, or recount the events about which the witness is expected to testify?
- 2. Does any witness have a physical health condition which might impair the witness's ability to perceive, recall, or recount the events about which the witness is expected to testify?

VII. Bias or Motive to Fabricate

1. Does any witness have pending, or is a witness contemplating, a civil lawsuit arising out of the subject matter of the testimony?
2. Does any witness have a relationship or past history with the accused that would tend to bias the witness against the accused?

VIII. Other Information Relating to the Admissibility of Evidence

1. Are you aware of any facts or circumstances surrounding an item of physical, documentary or testimonial evidence that you intend to use at trial, which if known to the Court, would create a reasonable possibility of suppression or exclusion upon motion of the defense?
2. Any information to the effect that the instant prosecution is based on or derived from evidence acquired as a result of governmental action violative of constitutional standards. This request expressly encompasses any information that might affect the Court's decision on a suppression issue in a fashion favorable to the accused.

Circumstances may arise in which a duty to disclose information may come into conflict with a duty of confidentiality or otherwise jeopardize the well-being of a witness. In such situations Assistant District Attorneys are expected to seek advice from the District Attorney and/or bring such conflict to the attention of the presiding judge as soon as is practicable.

All Assistant District Attorneys are urged to consult with the District Attorney and to err upon the side of disclosure when encountering difficulty in determining whether or not, within a specific fact pattern, a particular item falls into the category of Brady/Giglio material, or material that otherwise must be disclosed under the New York Rules of Professional Conduct. All Assistant District Attorneys are to be mindful that the duty to comply with Brady, *supra*, is irrespective of the admissibility of such evidence or whether such information is derived from a witness the prosecution does not intend to call at trial.