

# Model Ethical Rule Order

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

\_\_\_\_\_, D. J.

### ETHICAL RULE 3.8 ORDER FOR THE DISCLOSURE OF EVIDENCE

\_\_\_\_\_, 20\_\_\_\_\_

The defendant has moved for an order under A.B.A. Rule 3.8 [and other local ethical rules] requiring the prosecutor, in the language of the ethical rule, to “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.” In addition, Rule 3.8 requires that the prosecutor, in connection with sentencing, “disclose to the defense and to [the court] all unprivileged mitigating information know to the prosecutor.”

Defendant has specifically outlined examples of such information relevant to the case at bar — on both fronts — information negating guilt as well as information mitigating the offense. And the defendant has listed the agencies and investigators likely to be in possession of such information. Such information includes, but is not limited to, the following [insert description of information].

The information that is the subject of the defendant’s motion fits within the provisions of the ethical rule, as well as the government’s constitutional obligations under *Brady v. Maryland*, and as such, the government is **ORDERED** to:

- (a) produce such information described above to the defense within xxx days of this order; and
- (b) produce such additional information as fits within the government’s continuing obligation to disclose Rule 3.8 / *Brady* information.

The government shall be given an opportunity to object to the provision of this information by filing an *ex parte* motion, outlining why timely disclosure would endanger a witness or otherwise unfairly prejudice the prosecution before trial, together with the relevant Rule 3.8 materials for the court’s *in camera* review. The parties are on notice that willful and deliberate failure to comply with this order is punishable by contempt.

**SO ORDERED.**

**Date:** \_\_\_\_\_, 20\_\_\_\_ /s/ \_\_\_\_\_

\_\_\_\_\_ **U.S.D.C.**