



PRETRIAL DISCUSSION WITH DEFENSE ATTORNEYS IN CIRCUIT/DISTRICT COURT CASES

FC No.: 1222

Date: 04-27-05

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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I. Policy

It is the responsibility of the State's Attorney's Office (SAO), and not the responsibility of the police officer, to **provide** discovery **in a criminal case**. **However**, because the police officer is a witness in a criminal case, the officer may be asked questions by the attorney of record for the defendant. The officer is under no legal obligation to answer those inquiries. As a witness, the officer may or may not choose to answer questions **from the defense counsel**.

II. Procedure - Circuit Court Cases

- A. In all cases filed in Circuit Court, the Assistant State's Attorney (ASA) prepares a discovery package according to office policy and sends it to the attorney of record. This discovery package primarily contains the police reports, witness statements, and scientific reports. It is the responsibility of the SAO, not the police, to provide this discovery. If police officers involved in the case **make themselves available for an interview** with the defense attorney or investigator, **the SAO should be notified prior to the interview**. The officer must provide the defense attorney an opportunity to examine any physical evidence relevant to the case.
- B. If defense attorneys wish to speak to police officers in connection with a case, officers should coordinate their responses with the ASA assigned for the trial of that case. The ASA

may wish to have the conference between the defense attorney and police officer take place in the SAO office at some other time and/or location. If the ASA is not present at the time of the conference between the police officer and the attorney for the defendant, then the police officer should advise the ASA of the results of the conference. The police officer shall inquire and determine that the defense attorney is the attorney of record for the defendant in the criminal case.

- C. Regardless of the circumstances, the police officer should speak only with the attorney (or properly identified representative) who is, in fact, representing the defendant. The interview should concern only the facts and circumstances of the case and the defendant. Officers should avoid speculations or giving opinions beyond their training.

III. Procedure - District Court Cases (CALEA 82.1.1.d)

- A. Attorneys who have entered their appearances in cases may review all criminal-history information of that case which is on file with the Montgomery County Police **Records** Division. Copies of criminal-history information will not be furnished to defense attorneys. They may also review the police reports concerning their cases and for a fee obtain copies of these reports.
- B. Defense attorneys may also interview the investigating officers during the officers' normal working hours and examine all physical evidence in their possession. It will not be necessary to obtain prior approval from the SAO in district court cases.
- C. All of the above information may be furnished to a representative of the defense attorney if that person can provide identification indicating employment by that attorney.

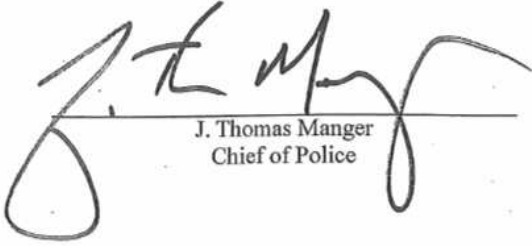
IV. Proponent Unit: Circuit Court Liaison Officer

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V. Cancellation

*This directive cancels Function Code 1222,
effective date 08-11-99.*



J. Thomas Manger
Chief of Police