New York State Chief Judge Janet DiFiore Announced Issuance of New Court Rules

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Dear Friend:

New York State Chief Judge Janet DiFiore has announced the issuance of new Court Rules requiring prosecutors to disclose to criminal defendants and their counsel, all exculpatory evidence in possession of the prosecution and law enforcement, at least thirty (30) days prior to a felony trial, at least fifteen (15) days prior to a misdemeanor trial and at least fifteen (15) days before a suppression hearing.

This decision was made following the issuance of the "Report on Attorney Responsibility in Criminal Cases" in February 2017 by the New York State Judiciary Task Force. This Report found that the failure of prosecutors to properly disclose exculpatory evidence to criminal defendants as required by *Brady v. Maryland*, *Giglio v. United States* and *People v. Geaslen*, had resulted in several wrongful convictions. As a result of these findings, the New York State Judiciary Task Force recommended that criminal courts issue an order, in all criminal cases where discovery was requested by the defendant, which would require prosecutors to disclose, in a prompt and timely manner, these exculpatory materials to criminal defendants.

Acting on the recommendation of the New York State Judiciary Task Force, the Chief Judge issued new Court Rules, 22 NYCRR 200.16 and 200.27, which go into effect on January 1, 2018. The new Court Rules are intended to prevent wrongful convictions and ensure the fair administration of justice in criminal prosecutions. A copy of the November 8, 2017 Press Release issued by the New York State Unified Court System for these new Court Rules is attached to this alert.

To accomplish these goals, 22 NYCRR 200.16 and 200.27 will require all New York criminal courts issue a "Order to Counsel in Criminal Cases," which will require timely disclosure of all evidence and information in the possession and/or control of the District Attorney's Office, including information and evidence in the possession of the police and law enforcement officers, which is exculpatory or favorable to the defendant, including, but not limited to: (1) information that impeaches the credibility of a testifying prosecution witness; (2) information that tends to exculpate, reduce the degree of an offense, or support a potential defense to a charged offense; (3) information that tends to mitigate the degree of the defendant's culpability as to a charged offense; (4) information that tends to undermine evidence of the

defendant’s identity as a perpetrator of a charged crime; and, (5) information that could affect in the defendant’s favor the ultimate decision on a suppression motion. The “Order to Counsel in Criminal Cases” requires favorable information be disclosed whether or not it is recorded in tangible form, and irrespective of whether the prosecutor credits the information.

The new Court Rules and the “Order to Counsel in Criminal Cases” represent a significant change to the existing rules and procedures for the disclosure of information the prosecution is required to disclose to a criminal defendant pursuant to *Brady v. Maryland, Giglio v. United States* and *People v. Geaslen*. The Criminal Law Department of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf and Carone, LLP stands ready to answer your questions about these new Court Rules and the impact they will have to prevent wrongful criminal convictions.