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TO ALL ATTORNEYS PRACTICING IN THE LEE COUNTY CRIMINAL COURTS:

This is to inform attorneys conducting business with the Lee County Attorney's office of changes to the open file discovery policy for Class B and above criminal offenses committed after January 1, 2014. This policy is intended to provide a framework of basic rules and guidelines for discovery and is intended to comply with legislative changes to Tex. Code of Crim. Proc. Article 39.14.

LEE COUNTY ATTORNEY DISCOVERY POLICY -- ATTORNEYS

In an effort to make the criminal discovery process in Lee County proceed in the most straightforward manner possible, to assist in the prompt resolution of criminal cases, to comply with Article 39.14 as revised, and to prevent the misuse of discovery materials, the Lee County Attorney ("CA") adopts this revised discovery policy:

1. Retained attorneys shall be considered the attorney for a defendant upon receipt by the CA of a letter of representation. A copy of said letter of representation should be sent to the appropriate court clerk. Appointed attorneys shall be considered counsel for a Defendant upon receipt by the CA of an order appointing an attorney to said case.
2. The CA maintains an open file policy for discovery of evidence items in criminal cases. Evidentiary materials will be made available to defense counsel after a criminal indictment has been filed in the District Court or criminal information has been filed in the County Court and the defense attorney has ACKNOWLEDGED and AGREED to the CA Discovery Policy. There will be no change in the ability of defense attorneys to come to the Lee County Attorney's office and review case files after a case has been filed in the appropriate court. Defense counsel may review the CA file and discovery materials either at court or may arrange to review the discovery in the CA office on a non-court date. Defense counsel substituting in as counsel shall sign an acknowledgment and agreement of this policy and request from the prior attorney all discovery materials previously provided.
3. For attorneys acknowledging and agreeing to the Lee County Attorney Discovery Policy, in each case and without the necessity of a specific request, the CA will provide defense counsel a copy of the

offense report(s) and written or oral witness/suspect statements. For DWI cases, the discovery materials will include, if any, DWI video, LDRS reports, DIC documents, and a copy of any blood/breath tests or analysis. Discovery materials will be made available at the first court date unless defense counsel has made other arrangements. The CA will provide only one copy of each video or audio recording. Video or audio recordings other than those provided without necessity of a specific request should be requested in writing by defense counsel. Only one copy of offense report(s), videos, etc. encompassing more than one criminal case of a particular Defendant will be copied for defense counsel, i.e., the CA will not normally make duplicate copies of the same discovery materials that apply to more than one case of the same defendant. Defense Counsel shall review the CA's file and make a written request to review and/or request copies of any other discovery items not initially duplicated for defense counsel. This includes requests to view any physical evidence in the case. **Discovery materials will be provided at no cost to defense counsel. Defense counsel shall coordinate with the CA for delivery of the discovery materials. The CA does not presently have the ability to submit discovery electronically.** In some cases there may be supplemental materials added to the CA file. Unless the supplemental material is exculpatory, it is the defense attorney's responsibility to request copies of updated discovery materials. Attorneys not acknowledging and agreeing to the Lee County Attorney Discovery Policy shall coordinate discovery with the CA in accordance with Article 39.14. Defense Counsel must document, on a form provided by the CA, all discovery materials reviewed and/or provided to Defense Counsel.

4. Certain discovery items will be restricted: Grand Jury testimony, Victim Impact Statements, information that would compromise the safety of a victim or witness, and information privileged by state or federal law. Criminal histories will allowed to be viewed only – no copies. Discovery materials will not include those items restricted pursuant to Family Code Section 264.408 and Article 39.15 Code of Criminal Procedure.

5. The attorney of record must ensure that all attorney and non-attorney staff, employees, investigators, experts, consulting attorneys or other agents are familiar with and comply with the duties, obligations, and restrictions outlined in Article 39.14. **Defense counsel shall not provide to a defendant copies of any discovery materials received from the state except to provide a witness a copy of that witness's own statement. Defense counsel shall not allow any person to view any discovery material without redacting information required by Article 39.14. Defense counsel shall not disclose any discovery materials to any third party except as provided by 39.14 (e) and (f).**

6. The CA has a continuing obligation to reveal exculpatory evidence to the defense before, during, and after trial.

7. Defense counsel and CA shall document all discovery provided to the defense.

8. These rules shall apply to juvenile cases.

IN EXCHANGE for providing copies of reports and other documents through discovery, the CA expects all defense counsel to be aware of the following restrictions and responsibilities:
A defense attorney may not make a request for or receive discovery materials unless the attorney is the attorney of record.

A defense attorney may not publicly disseminate or otherwise disclose any report, statement, photograph, or other evidence obtained through discovery to any person other than co-counsel, investigators or other person necessary to the defense of the case. Disclosure to any person remains subject to and limited by Article 39.14.

A defense attorney may not take anything from the CA file and may not photocopy anything from the CA file. Copies will be made by CA office staff.

A defense attorney or any other person working for the attorney may not provide victim or witness contact information received through discovery to the client or the client's family, or any other person not retained to assist in the defense of client.

All reports and other documents provided to a defense attorney pursuant to this policy are for criminal discovery only and shall not be considered part of the client's file. A defense attorney may not surrender or otherwise provide copies of these documents to a client or former client in the event that the client or former client requests a copy of their file.

In the event that co-counsel is associated with defense counsel on a particular case and co-counsel is not within defense counsel's firm, co-counsel must agree to this discovery Agreement. In the event defense counsel withdraws from a particular case, all discovery materials provided by the CA from that case shall be returned to the CA unless the CA agrees in writing that the discovery materials can be retained or delivered to the substituting attorney.

Violation of this discovery policy by defense counsel could result in limitations and/or restrictions regarding discovery materials.



Martin J. Placke,
Lee County Attorney

Acknowledgement and Agreement

I have read and understand the Lee County Attorney Discovery Policy and my responsibilities under this policy and I agree to abide by it for criminal cases in the Lee County Criminal Courts.

Signature: _____

Date: _____

Printed Name of Attorney: _____

Firm: _____

Phone Number: _____

Address: _____
