

## **PROPOSED AMENDMENTS TO THE OHIO RULES OF PROFESSIONAL CONDUCT**

Key to Proposed Amendment:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

1 **Rule 3.8 Special responsibilities of a prosecutor**

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3 The prosecutor in a criminal case shall not do any of the following:

4  
5 (a) pursue or prosecute a charge that the prosecutor knows is not supported by  
6 probable cause bring charges against a person unless a reasonable person would believe,  
7 based on the available evidence, that the person is guilty;  
8

9 (b) ~~[Reserved]~~ fail to seek evidence because it may damage the prosecution's case or  
10 aid the defense;  
11

12 (c) ~~[reserved]~~ fail to provide to a defendant information that the prosecutor's office  
13 knows, or, in the exercise of reasonable care, should have known about any police  
14 witness's dishonesty; professional misconduct; or bias based on race, sex, gender, sexual  
15 orientation, or the like;  
16

17 (d) in exercising discretion to investigate or to prosecute, improperly favor or  
18 invidiously discriminate against any person;  
19

20 ~~(d)~~ (e) fail to make timely disclosure to the defense of all evidence or information  
21 known, or, in the exercise of reasonable care, would have been known to the prosecutor  
22 that tends to negate the guilt of the accused or mitigates the offense, and, in connection  
23 with sentencing, fail to disclose to the defense all unprivileged mitigating information  
24 known to the prosecutor, except when the prosecutor is relieved of this responsibility by  
25 an order of the tribunal;  
26

27 ~~(e)~~ (f) subpoena a lawyer in a grand jury or other criminal proceeding to present  
28 evidence about a past or present client unless the prosecutor reasonably believes all of the  
29 following apply:  
30

31 (1) the information sought is not protected from disclosure by any applicable  
32 privilege;  
33

34 (2) the evidence sought is essential to the successful completion of an ongoing  
35 investigation or prosecution;  
36

37 (3) there is no other feasible alternative to obtain the information.  
38

39 ~~(f)~~ (g) ~~[Reserved]~~ fail to do the following when a prosecutor knows, or, by the exercise  
40 of reasonable care, or should have known of new, credible, and material evidence  
41 creating a reasonable likelihood that a convicted defendant is innocent would have been  
42 acquitted at trial of the crime for which the defendant was convicted:  
43

44 (1) promptly disclose that evidence to an appropriate court or authority; and  
45

46           (2) if the conviction was obtained in the prosecutor's jurisdiction;  
47  
48           (i) promptly disclose that evidence to the defendant unless a court  
49           authorizes delay; and  
50  
51           (3) (ii) — undertake further investigation, or make reasonable efforts to cause  
52           an investigation, to determine whether the defendant is innocent of the crime relevant and  
53           admissible evidence not proffered at trial or in any pretrial proceedings in the case,  
54           which, were it to be considered at a new trial, would result in a reasonable likelihood of  
55           acquittal.  
56  
57           (g) (h) fail to seek to remedy a conviction, even if all authorized appeals have concluded,  
58           when a prosecutor knows of clear and convincing evidence establishing that a defendant  
59           in the prosecutor's jurisdiction is innocent of the crime for which defendant was  
60           prosecuted.  
61  
62           (i) attempt to induce a defendant to waive the right to discovery of exculpatory  
63           evidence or the right to appeal as a condition of receiving a favorable guilty-plea offer;  
64  
65           (j) require a defendant to forgo civil claims as a condition of dropping charges or  
66           other promises of leniency;  
67  
68           (k) in closing argument, draw inferences from circumstantial evidence that is  
69           contradicted by extra-record evidence that the prosecutor knows, or, in the exercise of  
70           reasonable care, should know to be accurate;  
71  
72           (l) fail to correct testimony from a prosecution witness, including that elicited by  
73           defense counsel on cross-examination, if the prosecutor knows, or, in the exercise of  
74           reasonable care, should know that such testimony is false;  
75  
76           (m) charge two persons in two separate cases with the same criminal conduct when  
77           the prosecutor knows, or, through the exercise of reasonable care, should have known  
78           that only one of the two could have engaged in the alleged conduct.