

From: [RulesCommittee Secretary](#)
To: [RulesCommittee Secretary](#)
Subject: Criminal Rules committee idea
Date: Wednesday, November 03, 2021 3:24:05 PM

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From: Bruce Reinhart
Sent: Tuesday, October 26, 2021 8:15 AM
To: Angela Noble
Subject: Criminal Rules committee idea

In October 2020, Congress (without input from the AO Rules Committee) passed the Due Process Protection Act, which added FR Crim P 5(f):

f) Reminder of Prosecutorial Obligation.

(1) *In general.* In all criminal proceedings, on the first scheduled court date when both prosecutor and defense counsel are present, the judge shall issue an oral and written order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and the possible consequences of violating such order under applicable law.

(2) *Formation of order.* Each judicial council in which a district court is located shall promulgate a model order for the purpose of paragraph (1) that the court may use as it determines is appropriate.

The requirement to give this order “on the first scheduled date when both prosecutor and defense counsel are present” is confusing. It could refer to the initial appearance if the FPD is appointed or if retained counsel appears (whether or not they enter a permanent appearance). Or, it might refer to a later date if CJA is appointed or retained counsel is hired after the initial appearance. It would make more sense to require this order to be entered at arraignment, when there is permanent defense counsel and we are ordering the other discovery per the Standing Discovery Order.

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