

People v. Gilmore. 08PDJ084. September 9, 2008. Attorney Regulation. The Presiding Disciplinary Judge approved a Conditional Admission of Misconduct submitted by the parties and publicly censured Terence A. Gilmore (Attorney Registration No. 01306), effective September 9, 2008. Respondent and another district attorney negligently failed to take adequate steps to ensure the free flow of information and materials between investigative personnel and their office sufficient to place in their possession or control all material relevant to the accused in a murder case. The prosecution relied entirely on their investigator to decide what information would be transmitted to the prosecution and, therefore, ultimately disclosed to the defense. As a result, they failed to disclose information in the possession of, and generated by, those who participated in the investigation and evaluation of the case. Respondent's misconduct constituted grounds for the imposition of discipline pursuant to C.R.C.P. 251.5 and violated Colo. RPC 1.3, 3.4(d), and 8.4(d).

While the district attorney's office maintained an "open file" policy during the relevant time period, no policies existed in the 8th Judicial District, District Attorney's Office concerning the prosecution's duty to gather information from others who have participated in the investigation or the methods for doing so. Disclosure to the defense was based entirely on what was provided to them by the police department. They took no affirmative steps to inquire if more existed. Respondent did not knowingly or intentionally hide or withhold evidence from the defense. Instead, the prosecution relied entirely on their investigator to decide what information would be transmitted to the prosecution and, therefore, ultimately disclosed. As a result, material that should have been disclosed under Rule 16 was not disclosed to the defense. With respect to some of the undisclosed evidence, information known to the prosecution should have caused them to inquire if the undisclosed material existed.