



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

Howard H, Baker Jr. U.S. Courthouse
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Knoxville, Tennessee 37902

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Pamela L. Reeves
Chief Judge

August 26, 2019

J. Douglas Overbey
United States Attorney
800 Market Street
Suite 211
Knoxville, Tennessee 37902

Re: *Tennessee Board of Professional Responsibility Ethics Opinion 2017-F-163*

Dear Doug,

As you know by now, on August 23, 2019, the Tennessee Supreme Court vacated Tennessee Board of Professional Responsibility (“BPR”) ethics opinion 2017-F-163. That BPR opinion held: “Once a prosecutor knows of evidence and information that tends to negate the guilt of the accused, or that otherwise falls within Rule 3.8(d)’s disclosure requirement, the prosecutor ordinarily must disclose it as soon as reasonably practicable.” (*Id.* at 4.)

The state court’s decision does not control this Court’s ethical standards. Local Rule 83.6 provides:

The minimum standards of professional conduct before this Court include the Rules of Professional Conduct adopted by the Supreme Court of Tennessee insofar as they relate to matters within the jurisdiction of this Court. Such rules are not exhaustive of the ethical standards the Court expects attorneys to meet. *The Court has the obligation and responsibility to interpret and apply the RPC and other rules and standards of conduct without being bound by the decisions of Tennessee courts, other courts, or agencies.*

(Emphasis added.) Implicit in this local rule is the Court’s expectation that attorneys practicing before it should aspire to the highest standards of professional conduct, not the minimum standards. The RPC and other sources may state minimum standards, but this Court is free to insist upon higher standards. We believe higher standards are especially important in cases where a person’s freedom and liberty are at risk.

In this regard, the judges in our district have determined that the laudable sentiments in 2017-F-163 are an expression of what should be expected of attorneys representing the United States in criminal cases. That being the case, it is still our expectation that Assistant United States Attorneys who appear before us will disclose exculpatory and mitigating material to a criminal defendant in the manner described in the referenced ethics opinion, and certainly before any guilty plea.

If you have any questions or would like to discuss this issue, we would be happy to meet with you.

Sincerely,



Pamela L. Reeves
Chief, U.S. District Judge

cc: Tom Varlan, District Judge
Sandy Mattice, District Judge
Travis McDonough, District Judge
Cliff Corker, District Judge
Leon Jordan, Sr. District Judge
Tom Phillips, Sr. District Judge
Curtis Collier, Sr. District Judge
Ronnie Greer, Sr. District Judge
Ms. Elizabeth Ford