

Ethical Challenges for Lawyers Post Conviction

The Michael Morton Act (effective 1/1/14)

- ▶ Post-trial disclosures:
 - ▶ 39.14 (k): any exculpatory information discovered after trial must be “promptly disclosed” to the defendant or the court
 - ▶ What is the penalty for non-compliance?
 - ▶ What do the ethics rules say?

TDRPC 3.09(d)

The prosecutor in a criminal case shall:

make **timely disclosure** to the defense of **all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense**, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

Commission litigation (2016)

- ▶ Came to light after D's guilty plea to PCS that chemist had falsified lab reports in other cases
- ▶ Defendant grieved the DA/ADA alleging untimely disclosure (one year) and CFLD filed suit
 - ▶ Trial court dismissed:
 - ▶ R 3.09(d) does not impose any post-conviction duty on prosecutors

Commission litigation (2016)

- ▶ Fourteenth Court of Appeals affirmed:
 - ▶ R 3.09(d)'s plain language ("the accused")
 - ▶ R 3.09(d) was modeled after ABA's Model Rule 3.8
 - ▶ In 2008, ABA amended MR 3.8 to add a post-conviction duty of disclosure, acknowledging that the former rule contained no such requirement
 - ▶ No TX case had ever applied 3.09(d) this way
 - ▶ HOLDING: No violation

Commission litigation (2016)

- ▶ **BUT:** "Our holding should not be misinterpreted as a conclusion that prosecutors owe no duty to disclose exculpatory information post-conviction...." (!?)
 - ▶ Holding limited to specific facts
 - ▶ Based on what a reasonable lawyer would have understood his/her duty to be **at the time**
- ▶ Enactment of MMA may change the analysis for future cases:
 - ▶ Interpretation of the ethics rules informed by "laws defining specific obligations of lawyers and substantive and procedural law in general"

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Ethical Challenges for Lawyers Post Conviction

Also available as part of the eCourse

[2019 Robert O. Dawson eConference on Criminal Appeals](#)

First appeared as part of the conference materials for the
2019 Robert O. Dawson Conference on Criminal Appeals session
"Ethics for Post-Conviction Lawyers"