



"The Only Union for Police Officers and 911 Dispatchers"

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TO: Massachusetts Coalition of Police Members in Norfolk County
FROM: In-House Counsel Tim King
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RE: Norfolk County Rule 14 Inquiry Form Recommendations

The Massachusetts Coalition of Police In-House Counsel Office in conjunction with White and Williams has been working on Rule 14 issues since early this year. We have responded to and worked with a number of counties on their initial drafts of inquiry forms, and we have been quite successful in working with them to amend and/or delete questions that were outside the scope of Rule 14.

Norfolk County District Attorney's Office (NCDAO) recently released some new forms with the intent of complying with Rule 14, but we have identified issues that need to be addressed on these forms. The first form is entitled "Inquiry Form", the second "Case Specific Questionnaire". Below are some recommendations to assist you in completing these forms if you are so required. If you have a specific set of circumstances that raise specific concerns for you, please contact your area VP for further guidance. Please keep in mind, the inquiries to MassCOP should be based on specific circumstances that relate to your specific answers on these forms. We understand that many are opposed to the implementation of this rule and that you may not want to disclose information that may be asked, but in most cases where the form asks the questions in a manner that can be answered appropriately and fall within the parameters of Rule 14, you will be required to disclose the information to the district attorney's office for evaluation.

I have been in communication with the NCDAO and they are in the process of evaluating this version of the forms. The forms continue to evolve and this version will not be the last, as there are changes in the works. There may still be a situation where you must complete this version if you have a case prior to the amended forms being released. I have attached the current version so you are aware of the forms this advisory is referencing. As new forms are released, we will provide further updates and guidance.

1. Inquiry Form

The Inquiry Form contains 11 questions, 9-11 relating to expert witnesses only.

Question 3 requires a responding Officer to indicate if he/she has ever been charged with a crime in any jurisdiction. **We believe Officers are justified in refusing to respond to Question 3 if the charges are not pending or resulted in a disposition of conviction/admitting to sufficient facts.** Rule 14 does not provide for inquiry into "charged" crimes per se, and other questions cover pending charges and charges as to which there has been a conviction or you have admitted to sufficient facts, as to which Rule 14 does permit inquiry.

Question 6 - Rule 14 and case law permits inquiry into judicial adverse credibility determinations. Question 6 in the manner in which it is written appears to go beyond this. **We believe Officers are justified in responding that they either have or have not been found by a judge not to be credible.**

2. Case Specific Questionnaire

The "Case Specific Questionnaire" contains four questions, numbered 1 through 4, with each containing multiple lettered subparts (20 questions in total), each asking for an indication as to whether the responding Officer possesses, **to the best of his knowledge**, information on a broad topic, with many of the topics vague and ambiguous.

Question 1.c. asks the responding Officer to indicate whether, **to the best of his knowledge**, he/she has any information about "mental or physical impairment or conditions of any witness that may cause doubt on any witness's ability to testify truthfully and accurately . . ." **We believe an Officer who believes the response would be an infringement of privacy rights (because, in particular, it would require divulging confidential medical information) should decline to respond and assert that the declination is based on the Constitutional right of privacy.**

Question 1.f. asks the responding Officer if he/she has, **to the best of his knowledge**, information concerning any crime, **charged or uncharged**, committed by any witness, including himself. **We believe an Officer would be within his rights to refuse to respond to this question based on the Fifth Amendment to the Constitution, if he/she has a belief that the response could incriminate him/her.**

Questions 3.a. through 3.h. ask the responding Officer whether (again, **to the best of his knowledge**) he/she is aware of information that is "favorable" to the defense because it could have certain specified effects. Each of the subparts of Question 3 is **broad, vague, and ambiguous** and would require the responding Officer to provide a legal or other opinion, and often to speculate. For example, Question 3.d. calls for information that would "[s]upport the suppression or exclusion of any evidence or testimony the prosecutor may introduce." To respond, an Officer would have to speculate concerning the evidence the prosecutor might offer and evaluate the admissibility of the evidence (not a task that should befall Officers). **Given the guesswork and unfair and unreasonable imposition responding would entail, absent absolute certainty as to a response, Officers would be more than justified in responding in the negative to each subpart of Question 3, meaning you can simply answer "no" to those questions unless you are absolutely certain of the answer.**

Thank you to our partners at White and Williams for their work on these recommendations and to our members for continuing to provide excellence in law enforcement even when presented with these types of challenges. We will continue our efforts to create a workable solution for everyone involved.

