

**SUPREME COURT OF LOUISIANA**

**NO. 2018-B-0718**

**IN RE: JOHN N. BOKENFOHR**

**ATTORNEY DISCIPLINARY PROCEEDING**

**CRICHTON, J., additionally concurs and assigns reasons:**

The ODC has essentially asked this Court to impose a standard – a temporal element – for disclosure under Rule 3.3(b) that is broader than Respondent’s obligations under the mandates of discovery statutes and the trial judge’s discovery orders. I find this approach substantially similar to ODC’s recent position in *In re: Seastrunk*, 17-0178 (La. 10/18/17), 236 So. 3d 509. Specifically, *Seastrunk* presented the question of whether Rule 3.8(d) (the prosecutor in a criminal case shall make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or reasonably should know, either tends to negate the guilt of the accused or mitigates the offense) of the Rules of Professional Conduct was broader than, or co-extensive with, *Brady v. Maryland*, 373 U.S. 83 (1963). This Court ultimately held that they are co-extensive so as to not impose inconsistent disclosure obligations upon prosecutors.

Here, Respondent has argued that to hold that a criminal defense lawyer’s disclosure obligations under Rule 3.3(b) are broader than those found in the Code of Criminal Procedure or broader than those ordered by the judge’s discovery deadline, would cause the very confusion with which the Court was concerned in *Seastrunk*. I agree. Whether Rule 3.8(d) is at issue, as in *Seastrunk*, or Rule 3.3(b), as here, the application of the Rule should be as written. To do otherwise leads to confusion in the practice and, more importantly in this case, an injustice to Respondent.