



STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

January 9, 2023

Maxwell Kautsch
president@kcog.us
534 S. Kansas Ave. Ste. 1105
Topeka, KS 66603

Dear Mr. Kautsch:

I have reviewed your request for records pursuant to K.S.A. 45-215 *et seq.* related to:

"I hereby submit this request under the Kansas Open Records Act (KORA) for a copy of your office's Brady/Giglio policy."

Enclosed is the responsive record.

Respectfully,

Stephen M. Howe
Johnson County District Attorney
150 W. Santa Fe St. 3rd Floor
Olathe, KS 66061

Enclosure

OFFICE OF DISTRICT ATTORNEY
STEPHEN M. HOWE, DISTRICT ATTORNEY

DATE: March 21, 2017

TO: Johnson County Police Chiefs
Johnson County Sheriff
Kansas Highway Patrol

FROM: Steve Howe, District Attorney

RE: Giglio issues

Dear Colleagues:

Giglio v U.S., 405 U.S. 150, 92 S. Ct. 763 (1972) established the need for law enforcement agencies to provide prosecutors with “impeachable evidence” related to officers employed by the agency. Impeachable evidence is any evidence used “to call into question the veracity of the witness...” *State v. Stinson*, 43 Kan. App. 2d 468 (2010). This evidence is discoverable pursuant to *Brady v. Maryland* 373 U.S. 83, 83 S.Ct. 1194 (1963). Since then, the courts have provided further clarity regarding this type of evidence. Based on the current state of the law and to insure that we are in compliance, the following policy will be followed:

If a law enforcement agency determines that an officer engaged in conduct involving untruthfulness, dishonesty, deceit or criminal conduct during their employment, they shall immediately report it in writing to the District Attorney. Conduct that occurs prior to their employment will be handled on a case by case basis. The law enforcement agency will give all materials related to this conduct to the District Attorney.

The District Attorney will review the conduct to determine if it is *Giglio* material.

If the District Attorney determines that the conduct is *Giglio* material, the following steps will occur:

1. The law enforcement agency will be notified of the finding.
2. The District Attorney will request a list of all cases involving the named officer.

3. The District Attorney will determine the scope of the *Giglio* violation.

(a) In instances where the officer's conduct calls into question the integrity of the cases the officer was involved in, the District Attorney will take the following steps:

- (1) A review of all past and present cases.
- (2) Notification of defense counsel in writing that the officer has *Giglio* material in his file.
- (3) Agree to provide further information to counsel at their request.
- (4) Take action in all cases, which is in the best interest of justice. This includes but is not limited to dismissal of pending cases or withdrawal of dispositions in closed cases.
- (5) Review the cases for criminal conduct by the questioned officer.
- (6) If the District Attorney chooses to proceed with the prosecution of a pending case, or maintain the status of a past case, the District Attorney, if requested, will ask the court for an *in camera* review of all the officer's personnel files, and ask the court to rule on which of these documents are discoverable.
- (7) The District Attorney will comply with the court's discovery ruling.
- (8) The admissibility of any discovered documents will be determined at later hearings.

(b) In all other instances of *Giglio* conduct the District Attorney will take the following steps:

- (1) Review the officer's pending cases.
- (2) Determine which cases will still be prosecuted in light of the *Giglio* information
- (3) If a case will continue to be prosecuted, the District Attorney will notify defense counsel in writing that the officer has *Giglio* material in his file.
- (4) If the District Attorney chooses to proceed with the prosecution of a pending case, the District Attorney, if requested, will ask the court for an *in camera* review of all the officer's personnel files, and ask the court to rule on which of these documents are discoverable.
- (5) The District Attorney will comply with the court's discovery ruling.
- (6) The admissibility of any discovered documents will be determined at later hearings.

4. When the law enforcement agency has continued the employment of the concerned officer, or if the officer is hired by another agency, the District Attorney will meet with the head of the law enforcement agency to determine the impact of the *Giglio* matter on the State's ability to use the officer as a witness in future cases. It is the position of this office that the following policies will be complied with:
 - (a) A *Giglio* finding stays with that officer for the remainder of their career.
 - (b) A *Gigilo* officer will not be permitted to be the affiant on any probable cause statements for filing of changes or search warrants.
 - (c) An agency who continues to employ a *Giglio* officer will work with the District Attorney to provide notice to all defendants on cases filed by this office

5. The District Attorney retains the right to take any other actions deemed necessary in the interest of justice.

Thank you for your assistance.

Stephen M. Howe
Johnson County District Attorney