

# LYON COUNTY ATTORNEY

MARC GOODMAN

—County Attorney—

LYON COUNTY COURTHOUSE  
430 Commercial Street • Emporia, KS 66801  
(620) 341-3263 • Fax (620) 341- 3442

Amy L. Aranda

First Assistant County Attorney

Meghan K. Morgan

Carissa E. Brinker

Ashley McGee

Brian Henderson

Assistant County Attorneys

December 15, 2022

Thank you for your request for a copy of our office's policy with regards to Brady/Giglio issues. As it is our office policy to comply with all ethical guidelines, state statutes and decided caselaw regarding defendant's rights, and that Brady/Giglio issues are well settled law in the State of Kansas, it is the ongoing policy and practice of our lawyers to be educated on and to fully comply with the requirements outlined by Court Precedent, the Rules of Professional Conduct as they apply to prosecutors, and the statutes enacted by the state legislature. With regards to your *Brady* and *Giglio* inquiry specifically, the following general rules are applied.

### ***Brady v. Maryland***

When dealing with the evidence disclosure process, prosecutors have an unqualified obligation under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), to turn over all evidence favorable to the accused when the evidence may be "material either to guilt or punishment." The failure to disclose material evidence can, by itself, provide grounds for a new trial "irrespective of the good or bad faith of the prosecution" *Brady*, at 87.

Evidence that is "Favorable to the defense has been specifically held to encompass "impeachment evidence as well as exculpatory evidence." *Strickler v. Green*, 527 U.S. 263, 281-82 (1999); *United States v. Bagley*, 473 U.S. 667, 676 (1985); and *State v. Kelly*, 216 Kan. 31, 37 (1975).

### **Rules of Professional Conduct**

The Kansas Supreme Court has included the responsibility in the *Rules of Professional Conduct* that govern the behavior of Kansas prosecutors. Prosecutors are ethically required to "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." *In re Jordan*, 278 Kan. 254, 261 (2004). See also KRPC 3.8

### ***Giglio v. United States***

*Giglio v. United States*, 405 U.S. 150 (1972) requires prosecutors and investigators to turn over to the defense in discovery all impeachment evidence, or material information casting a shadow on a government witness's credibility.

To summarize these disclosure rules as applied by our office:

All "material" information must be provided to the defense by the prosecution. "Material" evidence includes exculpatory evidence as well as impeachment evidence concerning government witnesses.

The defense does not have to request the information, the prosecutor has the obligation to turn it over. Specific types of evidence to be disclosed pursuant to *Brady* and *Giglio* shall include, but not be limited to:

If any law enforcement agent possesses relevant information or evidence, the prosecutor has an obligation to learn the information and turn it over to the defense.

Law enforcement agencies are required to produce any impeachment information known about any witness, including law enforcement witnesses, to the prosecution such as:

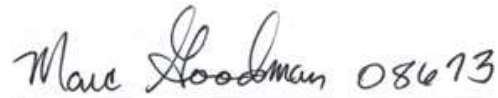
Impeachment information relating to officers such as:

- a. False written statement, report or other document
- b. Misconduct that reflects on truthfulness
- c. Misconduct that indicates a racial, religious, or other personal bias
- d. Misconduct that indicates promises, offers, or inducements, including the offer of immunity
- e. Misconduct involving handling of evidence or property
- f. Misconduct involving handling of evidence or property
- g. Misconduct that involves the use of force
- h. Criminal conviction (misdemeanor or above)
- i. Misconduct that involves harassment
- j. Misconduct that involves the inappropriate or unauthorized use of government data
- k. Misconduct that reflects on credibility

Law Enforcement officers with known impeachment issues will not be relied upon by this office to sign a verified complaint, affidavit or search warrant application without disclosing all known impeachment issues to the court.

Individual prosecutors will determine whether or not a witness with known impeachment problems pursuant to *Brady/Giglio* is necessary to the presentation of the case, and make disclosures as required.

Regards,



Marc Goodman  
Lyon County Attorney