

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS  
SEVENTH JUDICIAL DISTRICT**

STATE OF KANSAS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CLINT WAYNE SCHERMERHORN,	)	Case No 2022-CR-737; Div 1
JOSEPH D SENN,	)	Case No 2021-CR-358; PT Div
STEVEN C DRAKE JR,	)	Case No 2022-CR-107; Div 2
DAMIEN J BELT,	)	Case No 2022-CR-197; Div 1
JOHN D HAMPTON,	)	Case No 2022-CR-180; PT Div
MICHAEL J HERSCHELL,	)	Case No 2022-CR-162; Div 2
LEE ANDREW MITCHELL PENNINGTON)	)	Case No 2022-CR-215; Div 1
JASEN BILLY CARTER,	)	Case No 2022-CR-314; Div 1
JERRY W CAMPBELL,	)	Case No 2018-CR-701; Div 1
JOSHUA MICHAEL TOWNE,	)	Case No 2019-CR-645; Div 6
RANDY D BURNS JR,	)	Case No 2022-CR-553; Div 1
RANDY D BURNS JR,	)	Case No 2022-CR-550; Div 1
VINCENT L WALKER,	)	Case No 2022-CR-132; Div 1
DAVID I PRATT,	)	Case No 2021-CR-1069; Div 2
YUSAF A AUSTIN,	)	Case No 2021-CR-433; Div 2
CHRISTINA DAWN WOOD,	)	Case No 2022-CR-133; PT Div
NOAH D FALK,	)	Case No 2022-CR-267; PT Div
ELIJAH L RAIGOZA,	)	Case No 2022-CR-463; Div 1
MICHELLE D SMART,	)	Case No 2021-CR-446; Div 3
GARY D BOYINGTON JR,	)	Case No 2022-CR-221; Div 1
CORMICK G FERRELL,	)	Case No 2021-CR-752; Div 3
JESSICA STEPHENSON,	)	Case No 2022-CR-640; Div 1
HEATHER L WIXOM,	)	Case No 2021-CR-683; Div 1
HEATHER L WIXOM,	)	Case No 2021-CR-551; Div 1
DAVID A SNOW,	)	Case No 2022-CR-334; Div 1
JAMES ANDREW OCHS,	)	Case No 2021-CR-885; Div 6
MARCUS M. GEORGE,	)	Case No 2020-CR-680; Div 1
	)	
Defendant.	)	
	)	
<hr style="width: 40%; margin-left: 0;"/>		
(Pursuant to K.S.A. Chapter 21)		

**MEMORANDUM IN SUPPORT OF MOTION TO QUASH VARIOUS**  
**"SUBPOENA/DUCES TECUM"**

**I. NATURE OF THE CASE**

This memorandum addresses a recent barrage of subpoenas issued to Rich Lockhart, Chief of Police of the Lawrence, Kansas Police Department, by Suzanne Valdez, the Douglas County District Attorney. For each subpoena, the underlying action is a criminal case in which Lockhart is commanded to appear at district court and testify in behalf of plaintiff and to bring with him the "professional conduct files" of various City of Lawrence police officers.

The volume of subpoenas issued in a short period of time - 27 over the course of two and a half days -- may amount to an abuse of legal process, create an unreasonable burden on movant, and leave little time with which to comply. Pursuant to K.S.A. 2021 Supp. 60-245(c)(3), then, movant now moves the court to quash the subpoenas on the grounds that the subpoenas create an undue burden on him or, alternatively, fail to allow him a reasonable time to comply. Movant's rationale follows.

**II. STATEMENT OF MATERIAL FACTS**

1. Movant Rich Lockhart has 32 years of experience as a law enforcement officer. (Affidavit of Rich Lockhart, ¶ 3).

2. Presently, movant is employed by the City of Lawrence, Kansas, as its Chief of Police. Movant has served in that capacity since January 17, 2022. (Affidavit of Rich Lockhart, ¶ 2).

3. On November 12, 2021, the District Attorney disseminated to the five law enforcement agencies within Douglas County, Kansas, including the City of Lawrence, Kansas, Police Department, what the District Attorney called the "final" "'Brady/Giglio Policy' of the District Attorney" and an accompanying "Law Enforcement Checklist." (Affidavit of Rich Lockhart, ¶ 4).

4. The "final" policy requires the law enforcement agencies to take certain actions and mandates that they do certain things. It was presented as a *fait accompli* and none of the law enforcement agencies were allowed any input in the policy or the checklist. (Affidavit of Rich Lockhart, ¶ 4).

5. On January 10, 2022, over the objections of the five law enforcement agencies involved, the Office of the District Attorney adopted officially its "final" "'Brady/Giglio Policy' of the District Attorney" and an accompanying "Law Enforcement Checklist," and issued a press release. (Affidavit of Rich Lockhart, ¶ 5).

6. Upon receipt of the District Attorney's policy, the City of Lawrence, Kansas, Police Department informed the District Attorney that it could not comply with the District Attorney's policy, as adopted, and commenced work, with the other law enforcement agencies in Douglas County, Kansas, on a separate *Brady/Giglio* policy and checklist. (Affidavit of Rich Lockhart, ¶ 6).

7. The main sticking points regarding the District Attorney's policy, at least as far as the City of Lawrence, Kansas, was concerned, were the facts that the District Attorney's policy required (1) that the District Attorney or her designee be granted free rein to traipse through employees' confidential personnel files in order to fish for *Brady v. Maryland*, 373 U.S. 83 (1963) or *Giglio v. United States*, 405 U.S. 150 (1972), material and (2) that the City be required to keep and to maintain, for each employee, checklists far exceeding the requirements of *Brady* or *Giglio*. (Affidavit of Rich Lockhart, ¶ 7).

8. On April 15, 2022, the five law enforcement agencies, including the City of Lawrence, Kansas, Police Department, as the result of their cooperation, released separate *Brady/Giglio* policies and checklists. (Affidavit of Richard Lockhart, ¶ 8).

9. Subsequently, movant's department, including movant, has been inundated with subpoenas issued by the District Attorney. Many of the subpoenas have previously commanded officers to appear during scheduled vacations. (Affidavit of Richard Lockhart, ¶¶ 9-10).

10. On Monday, May 23, 2022, movant received an email from Suzanne Valdez, District Attorney, asking for access to a former, discharged employee's personnel file in order to determine whether there were *Giglio* materials related to the discharge. Movant responded that the separation of the employee's employment did not implicate *Giglio*. The District Attorney, apparently ignoring movant's response, replied, demanding access to the former employee's personnel file to make her own, separate determination. (Affidavit of Rich Lockhart, ¶ 11 and Exhibit A thereto).

11. On Monday, May 23, 2022, Suzanne Valdez, District Attorney, unilaterally scheduled a mediation for Friday, June 3, 2022, at 1:00 p.m., to be facilitated by the Honorable Kevin Moriarty, Johnson County District Court Judge, Retired, and "invited" the five law enforcement agencies of the County. The District Attorney closed the "invitation" as follows:

I am hopeful that with Judge Moriarty's assistance, we can work out our differences while complying with our constitutional mandate required of *Giglio*. We need to work

together in the interest of public safety, and I am confident that we can figure this all out.

(Affidavit of Rich Lockhart, ¶ 12, and Exhibit B thereto).

12. The five law enforcement agencies ultimately accepted and welcomed the District Attorney's "invitation" and agreed to meet with the District Attorney to mediate the *impasse* regarding the District Attorney's *Brady/Giglio* policy and checklist before Judge Moriarty on Friday, June 3, 2022, at 1:00 p.m. (Affidavit of Rich Lockhart, ¶ 13).

13. When the five law enforcement agencies appeared at the mediation, they were informed, in the first instance, that the District Attorney would not compromise her policy one *iota*. Unsurprisingly, the mediation proved unsuccessful. (Affidavit of Rich Lockhart, ¶ 13).

14. At 10:56 a.m. on June 3, 2022, shortly before mediation commenced, the District Attorney transmitted the following electronic mail to City of Lawrence, Kansas, Police Officer and Jeremiah R. Risner and Detective Greg I. Pruett:

I am writing to let you know that for the *Zarse* trial we have endorsed and have issued a subpoena duces tecum to LPD Chief Lockhart for your personnel files. The reason for this is to ensure that neither of you have any potential *Giglio* material that could potentially affect the integrity of this case.

Josh [Seiden] and I are both confident that neither of you are *Giglio*-impaired, but Chief Lockhart has refused to comply with our *Brady/Giglio* policy so we must have him appear before the court and comply in that manner.

My sincerest apologies for having to go this route, especially when all your chief had to do was complete the checklist for both of you without involving the court. I've attached the DA *Giglio* policy in this email and the checklist is Appendix A of the document. Please review the 11 questions on the Checklist because these are questions that will be asked of your chief on the record, unfortunately.

(Affidavit of Rich Lockhart, ¶ 14 and Exhibit C thereto).

15. After the failed "mediation," movant, along with one of his deputy chiefs, met on several occasions with the District Attorney herself and her Deputy District Attorney. Those meetings occurred on June 15, 2022, June 16, 2022, and June 24, 2022. An agreement was reached regarding how the *Brady/Giglio* process would work between those two entities. (Affidavit of Rich Lockhart, ¶ 15).

16. The agreed-upon resolution included allowing the District Attorney to view a summary document prepared by the police department of any particular disciplinary investigation. Such document would include a summary of the policies investigated in a particular complaint/investigation, and a notation regarding whether such policies were in fact found to be violated. The District Attorney could view such summary document by contacting

the police department in advance to arrange for a meeting. (Affidavit of Rich Lockhart, ¶ 16).

17. This arrangement was to alleviate the need for the District Attorney's office to subpoena movant regarding an officer's file because the District Attorney would have already viewed the summary and known what, if any, policies were violated, including any relevant to *Brady/Giglio*. (Affidavit of Rich Lockhart, ¶ 17).

18. Following this agreement, however, the District Attorney did not in fact visit the police department to view any particular files until instructed by the court on August 4, 2022, related to a pending criminal case. Additionally, shortly after that previously agreed upon arrangement, the District Attorney again began issuing subpoenas. (Affidavit of Rich Lockhart, ¶¶ 18-19).

19. On Tuesday, September 20, 2022 and Wednesday, September 21, 2022, movant received from Suzanne Valdez -- on those two days alone -- 25 Subpoenas Duces Tecum, prompting the filing of this motion. An additional two subpoenas were delivered to movant on Thursday, September 22, 2022. (Affidavit of Rich Lockhart, ¶ 20; note that the second subpoena was delivered just as this motion was to be filed). Those subpoenas are attached hereto as Exhibit D, and a chart summarizing them is as follows:



<b>Case No.</b>	<b>Case Name</b>	<b>Date/Time</b>	<b>Items to Bring</b>
2019-CR-645	State of Kansas v. Joshua Michael Towne	09/21/22 (9am) through 09/22/22 (5pm)	Professional Conduct Files: William Bradford, Michael Ramsey, Kenneth Rodgers, and McKenzie Williams
2022-CR-162	State of Kansas v. Michael J Herschell	09/26/22 (9am)	Professional Conduct Files: Shaun Daubert, Eric Dawson, Chloe Fewins, Daniel Gray, Mark Hammond, Caleb Nesmith, Alexander Sullivan, and Justin Trowbridge
2022-CR-215	State of Kansas v. Lee Andrew Mitchell Pennington	09/26/22 (9am) through 09/30 (5pm)	Professional Conduct Files: M Todd Brown, Josh Leitner, Kimberlee Nicholson, Johnathan Prue, and Adam Welch
2022-CR-314	State of Kansas v. Jasen Billy Carter	09/26/22 (9am) through 09/27/22 (5pm)	Professional Conduct Files: Austin Twite
2018-CR-701	State of Kansas v. Jerry W Campbell	09/26/22 (9am) through 09/28/22 (5pm)	Professional Conduct Files: Kristen Kennedy and Matthew Roberts
2022-CR-553	State of Kansas v. Randy D Burns Jr.	09/28/22 (10am)	Professional Conduct Files: Steven Alvord and Amber Rhoden
2022-CR-550	State of Kansas v. Randy D Burns Jr.	09/28/22 (10am)	Professional Conduct Files: Stephen Ramsdell
2022-CR-180	State of	09/29/22	Professional Conduct

	Kansas v. John D Hampton	(9am)	Files: Evan Curtis
2022-CR-132	State of Kansas v. Vincent L Walker	09/29/22 (3pm)	Professional Conduct Files: Brad Fry and Kimberlee Nicholson
2022-CR-737	State of Kansas v. Clint Wayne Schermerhorn	10/3/22 (3pm)	Professional Conduct Files: Dustin Lister, Michael Ramsey and Linda Durkes
2021-CR-358	State of Kansas v. Joseph D Senn	10/3/22 (9am)	Professional Conduct Files: Sean Crellin, David Duvall, and Star Bronson
2022-CR-197	State of Kansas v. Damien J Belt	10/3/22 (9am)	Professional Conduct Files: Sean Crellin, and Anthony Harvey
2022-CR-107	State of Kansas v. Steven C Drake Jr	10/3/22 (9am) through 10/5/22 (5pm)	Professional Conduct Files: Levi Flohrschutz, and Justin Trowbridge
2021-CR-433	State of Kansas v. Yusaf A Austin	10/4/22 (9am)	Professional Conduct Files: Meghan Bardwell, M Todd Brown, and Joshua Leitner
2021-CR-446	State of Kansas v. Michelle D. Smart	10/5/22 (9am) through 10/7/22 (5pm)	Professional Conduct Files: Jamal Curry and Daniel Palen
2021-CR-334	State of Kansas v. James Andrew Ochs	10/5/22 (9am) through 10/6/22 (5pm)	Professional Conduct Files: Steve Duckworth, and Daniel Gray
2022-CR-334	State of Kansas v. David A Snow	10/5/22 (2:30pm)	Professional Conduct Files: Parker Finch

2020-CR-680	Marcus M. George	10/6/22 (11am)	Professional Conduct Files: Justin Snipes and Daniel Gray
2022-CR-133	State of Kansas v. Christina Dawn Wood	10/06/22 (1pm)	Professional Conduct Files: Brad Fry, Andrew Morgan, and Geneva LeeAnne Pringle
2022-CR-267	State of Kansas v. Noah Falk	10/11/22 (1pm)	Professional Conduct Files: Steven Alvord, David Duvall, Daniel Palen, and Mallory Reynolds
2021-CR-1069	State of Kansas v. David I Pratt	10/17/22 (9am) through 10/18/22 (5pm)	Professional Conduct Files: Allison Haddad, and Anthony Harvey
2022-CR-463	State of Kansas v. Elijah L Raigoza	10/17/22 (1:30pm)	Professional Conduct Files: Anthony Harvey and Mallory Reynolds
2022-CR-221	State of Kansas v. Gary D Boyington Jr	10/17/22 (9am) through 10/19/22 (5pm)	Professional Conduct Files: Gwyn Fogarty, Greg Pruett, Michael Ramsey, Mallory Reynolds, Charles Stewart, Michael Verbanic, Brett Horner, and Matthew McNemee
2021-CR-752	State of Kansas v. Cormick G Ferrell	10/17/22 (9am) through 10/21/22 (5pm)	Professional Conduct Files: Meghan Bardwell, Lindsay Bishop, Steven Koenig, Joshua Leitner, Greg Pruett, and Donald Hicks
2022-CR-640	State of Kansas v. Jessica Stephenson	10/17/22 (9am) through 10/18/22	Professional Conduct Files: Shawn Daubert, Nicholas Pate, and Mallory

		(5pm)	Reynolds
2021-CR-683	State of Kansas v. Heather Wixom	10/17/22 (9am) through 10/18/22 (5pm)	Professional Conduct Files: Chloe Fewins, and Charles Stewart
2021-CR-551	State of Kansas v. Heather Wixom	10/17/22 (9am) through 10/18/22 (5pm)	Professional Conduct Files: Gwyn Fogarty

20. Movant has never refused to provide the District Attorney with any *Giglio* checklists; he has only challenged and objected to *her* particular checklist. He was never asked by the District Attorney to complete a *Giglio* checklist in these particular cases; nor did the District Attorney make any request for *Giglio* information regarding any person who might be called in these cases. (Affidavit of Rich Lockhart, ¶¶ 21-22).

21. However, regardless of whether or not the District Attorney made such a request, if such *Giglio* information existed, movant would voluntarily have provided such information to the District Attorney -- as he is required by law to do -- without the necessity of the District Attorney interposing such a request. (Affidavit of Rich Lockhart, ¶ 21).

22. Movant, as Chief of Police, has a number of previously scheduled meetings and engagements on the days and times he is

commanded to appear under the various subpoenas. Appearing in court with the frequency required under the subpoenas in order to testify on personnel records is neither reasonable nor an expectation of him by the City as a duty rooted in his position as Chief of Police. (Affidavit of Rich Lockhart, ¶ 23).

23. Movant cannot do his job when he is not "at" his job, and instead waiting in court for days on end. Rather, his job as Chief of Police requires him to be present and available at the City. (Affidavit of Rich Lockhart, ¶ 24).

### III. ARGUMENT AND AUTHORITIES

#### A. Applicable Standards

Under the Kansas Code of Criminal Procedure, codified as amended at K.S.A. 22-2101 *et seq.*, the issuance of subpoenas in criminal cases is governed by K.S.A. 22-3214. In pertinent part, it provides:

(1) The prosecution and any person charged with a crime shall be entitled to the use of subpoenas or other compulsory process to obtain the attendance of witnesses. Except as otherwise provided by law, **such subpoenas or other compulsory process shall be issued and served in the same manner and the disobedience thereof punished the same as in civil cases. ...**

*Id.* (emphasis supplied). Accordingly, the Subpoena issued to movant in this case is governed by the Kansas Code of Civil

Procedure. See *State v. Lewis*, 50 Kan. App.2d 405, 411, 327 P.3d 1042 (2014).

In civil cases, subpoenas are governed by K.S.A. 2021 Supp. 60-245. See *Kansas Dept. of Revenue v. Coca Cola Co.*, 240 Kan. 548, 550, 731 P.2d 273 (1987). In pertinent part, it provides:

. . .

(c) *Protecting a person subject to a subpoena.*

(1) *Avoiding undue burden or expense; sanctions.* A party or **attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense** on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

. . .

(3) *Quashing or modifying a subpoena.*

(A) *When required.* On timely motion, the issuing court **must** quash or modify a subpoena that:

. . .

(i) **Fails to allow a reasonable time to comply.**

. . .

(iv) **Subjects a person to undue burden**

*Id.* (emphasis added).

Here, as shown below, movant contends that the subpoenas that are the subject of this motion subject him to undue burden and, alternatively, fail to allow him a reasonable time to comply.

## **B. Discussion**

### **1. Undue Burden**

Counsel for movant filed, on June 7, 2022, a similar motion to quash a subpoena issued to movant, raising concerns regarding undue burden and an unreasonable time to comply. That motion was granted by Judge Huff. Nevertheless, the District Attorney has taken it upon herself to not only issue another such subpoena, but to issue dozens of them.

Movant contends that the court must quash the current subpoenas because they create an undue burden by requiring him to appear in court almost daily. In some cases, certain subpoenas command his appearance over the course of several days.

Movant, as Chief of Police, is tasked with handling and overseeing a number of complex activities and operations which occupy a large majority of his schedule. By being required to appear in court under the subpoenas at issue, there is a disservice created to the City of Lawrence and to the community in which he serves. In short, movant does not have the time to respond to these subpoenas, particularly because they appear to be issued as some

sort of retaliation for noncompliance with the District Attorney's *Brady/Giglio* policy.

The law requires that, in issuing a subpoena, a party must take reasonable steps to avoid undue burden or expense upon the subject of the subpoena. See K.S.A. 2021 Supp. 60-245(c). Here, for whatever reason, contrary to the law, it appears that the District Attorney has weaponized her subpoena powers, perhaps to bend the City, the Police Department, and movant to her will. Movant would argue that, in taking that tack, the District Attorney has gone out of her way to impose undue burden and expense on movant rather than taking steps to avoid those harms.

In fact, in her email to the officer and detective provided in Exhibit C, the District Attorney admitted that movant was issued the subpoena subject to the June 7, 2022 motion to quash, as a result of his unwillingness to comply with her *Brady/Giglio* policy. Movant would suggest that is an improper use of the subpoena power, that it is tantamount to an abuse of process, and that, under those circumstances, pursuant to K.S.A. 2021 Supp. 60-245(c), the District Attorney may be subject to sanctions.

## **2. Reasonable Time to Comply**

Alternatively, movant argues that the subpoenas issued fail to allow him a reasonable time to comply. When the first 12



subpoenas were delivered to the police department on Tuesday, September 20, 2022, one of them commanded the movant's appearance at a hearing that very next morning - less than 24 hours after delivery - and to bring with him various "professional conduct files." Frustratingly, that hearing was no longer scheduled because the defendant in that case - Joshua Michael Towne - had entered a plea *before* the subpoena was even delivered, but the District Attorney did not have the courtesy to advise movant that the hearing had been canceled and that his appearance was no longer needed. This is a blatant disregard for movant's time and responsibilities as Chief.

The next time movant is commanded to appear in court is Monday, September 26, 2022, under **four** subpoenas issued for that same day, at the same time. While movant has since been released from some of those hearings, it nevertheless illustrates how difficult it is to comply with the subpoenas when there is such short notice provided ahead of the hearing dates.

Several of the subpoenas, delivered on September 20, 2022, and September 21, 2022, command movant to appear in court just days later, while all of the subpoenas command him bring with him a number of various records from the police department, with little time to locate those files and prepare ahead of time. These

subpoenas fail to allow movant a reasonable time to comply, and therefore **must** be quashed. See K.S.A. 2021 Supp. 60-245(c)(3)(A)(i).

#### **IV. CONCLUSION**

Suzanne Valdez has been the Douglas County District Attorney since January 2021, but this bombardment of subpoenas has only begun recently. If the checklist Valdez's office seeks to force upon movant is really necessary, one must wonder why it took her office more than a year to implement. The alternative - which is most likely - is that these subpoenas directed at the Chief of Police are a retaliation for his non-acceptance of the checklist.

Nevertheless, the City has previously provided the District Attorney's Office with a modified checklist that movant is willing to provide, though providing any such checklist is not required by law. (A draft template is provided at Exhibit E thereto). This modified checklist was provided during the time of the June 7, 2022 motion to quash, with no issue. Movant is willing to provide this checklist for the upcoming cases he is subpoenaed on in lieu of needing to appear and provide records.

In sum, because the 27 subpoenas issued to movant by Suzanne Valdez, District Attorney, in behalf of plaintiff State of Kansas

in the above-captioned cases create an undue burden for the Chief and do not allow a reasonable time to comply, movant respectfully requests the court to quash all of those subpoenas at issue in this motion.

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and exact copy of the above and foregoing "Memorandum in Support of Motion to Quash Various '*Subpoena/Duces Tecum*'" was served upon the following:

Suzanne Valdez, District Attorney, 111 East 11th Street,  
Unit 100, Lawrence, Kansas 66044-2977, attorney for  
plaintiff,

by hand-delivery and by depositing such copy in the United States Mail, postage prepaid, at Lawrence, Kansas, on this 22nd day of September, 2022.

/s/ Maria Garcia  
MARIA GARCIA

**AFFIDAVIT**

I, Rich Lockhart, being of lawful age, and having first been duly sworn upon my oath, do hereby state:

1. I am a resident of Douglas County, Kansas.

2. I am currently employed by the City of Lawrence, Kansas, as Chief of the City of Lawrence, Kansas, Police Department. I have served in that capacity since January 17, 2022.

3. I have 32-years' experience as a law enforcement officer.

4. Shortly after being hired by the City, I was informed that the District Attorney's Office had prepared a Brady/Giglio policy and a related checklist and that a "final" policy had been issued to the Police Department and to the other four law enforcement agencies within the County on November 12, 2021. I believe there were some meetings regarding that "final" policy after that, but no one was allowed to give any input to it.

5. On January 10, 2022, the District Attorney's Office released its "final" Brady/Giglio policy and checklist. Although it requires my department to do certain things and to take certain actions, my department was not permitted any input into the District Attorney's "final" policy. The District Attorney issued a press release announcing the "final" policy.

6. I have informed the District Attorney that the City of Lawrence, Kansas, Police Department cannot follow the "final"

policy, as issued, and will not be using the checklist. My Department and the other law enforcement agencies in the County then began to work on a separate Brady/Giglio policy and checklist.

7. I have no issue with the use of Brady/Giglio checklists and have, in the past, prepared them for various prosecutors, including the United States Attorney's Office. However, the City cannot allow the District Attorney to access employee's personnel files as it may deprive those employees of rights of privacy and would expose the City to liability for allowing such an intrusion. Also, the District Attorney's Brady/Giglio checklist goes far beyond that which is required by those cases.

8. On April 15, 2022, through the joint efforts of the five law enforcement agencies of Douglas County, the City of Lawrence, Kansas, Police Department released a revised Brady/Giglio policy.

9. Since that time, my Department, including myself, have been inundated with a flood of subpoenas issued by the District Attorney.

10. It would appear that, in addition to tying up my department by commanding my officers to appear at every hearing, the District Attorney has specifically targeted police officers who have scheduled vacations.

11. On Monday, May 23, 2022, and into May 24, 2022, I engaged in an email exchange with the District Attorney. In that exchange, the District Attorney requested whether there was a *Giglio*

information regarding a discharged, former employee. I informed the District Attorney that the "reasons for his separation are not related to any *Brady/Giglio* issues." The District Attorney would not accept that answer and demanded "to schedule a time that [Deputy District Attorney] Josh [Seiden] (or another one of [her] prosecutors) and [she] can review [the former officer's] complete personnel file at LPD." (A true and accurate copy of this email exchange is affixed hereto as Exhibit A.)

12. Also, on Monday, May 23, 2022, I received an invitation from District Attorney Suzanne Valdez to attend a mediation on Friday, June 3, 2022, at 1:00 p.m., to be facilitated by Retired Judge Moriarty. I was not consulted previously as to the date, the time, or the mediator. (A true and accurate copy of the email correspondence is affixed hereto as Exhibit B.)

13. Ultimately, in order to end the stalemate, we welcomed the "invitation" and attended the mediation scheduled for June 3, 2022. While we were willing to discuss the use of a checklist and to compromise on other issues, we were informed from the start that the District Attorney was not interested in compromising anything. We did not reach an agreement.

14. On Friday, June 3, 2022, shortly before the mediation began, the District Attorney sent an email correspondence to Officer Jeremiah Risner and Detective Greg Pruett. Therein, the District Attorney apologized in advance that in retaliation for my

reluctance to follow her policy that she had subpoenaed me in this case, that she had commanded me to bring their personnel files, and that I would be questioned on the stand regarding whether or not they had any Brady or Giglio issues. (A true and accurate copy of that email correspondence is affixed hereto as Exhibit C.)

15. After this failed mediation, myself and Deputy Chief Adam Heffley met on several occasions with the District Attorney herself and her Deputy District Attorney, Josh Seiden. Those meetings occurred on June 15, 2022, June 16, 2022, and June 24, 2022. We reached an agreement as to how the Brady/Giglio process would work between the police department at the District Attorney's Office.

16. We agreed that the District Attorney could view a summary document prepared by the police department of any particular disciplinary investigation. Such document would include a summary of the policies investigated in a particular complaint/investigation, and a notation regarding whether such policies were in fact found to be violated. The District Attorney could view such summary document by contacting the police department in advance to arrange for a meeting with the Major who oversees the Office of Professional Accountability.

17. This arrangement was to alleviate the need for the District Attorney's office to subpoena me to court to testify about an officer's file, since the District Attorney would already know whether there were policy violations from reviewing the summary.

18. The District Attorney never did visit the police department to view any summaries, except for one time after being directed by Judge Hanley during a hearing in a criminal case held on August 4, 2022.

19. Also after the previously agreed upon arrangement, the District Attorney again began issuing subpoenas to me.

20. On Tuesday, September 20, 2022 and Wednesday, September 21, 2022, 25 subpoenas addressed to me were delivered to the front office at the Lawrence Police Department by someone from the District Attorney's Office. Another subpoena was delivered to me on the morning of Thursday, September 22, 2022. (A true and accurate copy of the subpoenas are affixed hereto as Exhibit D and are incorporated herein by reference.)

21. In these cases, I was never asked in advance by the District Attorney to provide any Brady/Giglio information on any witness to be called in the case. Of course, had there been any such information, I would have voluntarily provided it to the District Attorney without the need for any such request.

22. I have never refused to provide the District Attorney with any *Giglio* checklists and have only challenged Valdez' particular checklist. I have also never been asked by the District Attorney to complete a *Giglio* checklist in these particular cases; nor did the District Attorney make any request for *Giglio*



information regarding any person who might be called in these cases.

23. As the Chief of Police, I have a number of previously scheduled meetings and engagements on the days and times I am commanded to appear under the various subpoenas. Appearing in court with the frequency required under the subpoenas in order to testify on personnel records is not something I am tasked with doing as part of my job duties as Chief.

24. I cannot do my job when I am not at my job. The expectation of the City of me is that I am present and available to fulfill the duties I was hired to achieve.

**FURTHER AFFIANT SAITH NOT.**



RICH LOCKHART  
Chief  
Lawrence, Kansas, Police  
Department

**VERIFICATION**

STATE OF KANSAS       )  
                                  )  
                                  )  
COUNTY OF DOUGLAS   )                   ss:

**SUBSCRIBED AND SWORN** to before me on this 22 day of September 2022, by Rich Lockhart, Chief of Police, City of

Lawrence, Kansas, Police Department, who is personally known to me to be the same person who executed and swore to the truth of this document.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal on the day and year last above written.



Janelle Zollinger  
Notary Public  
State Of Kansas  
My Appt Expires 11/24

*Janelle Zollinger*  
NOTARY PUBLIC

My appointment expires: 11.02.24

---

**Subject:** FW: Former LPD Officer Brett Horner - need separation information

**From:** [svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org) <[svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org)>  
**Sent:** Tuesday, May 24, 2022 11:11 AM  
**To:** Rich Lockhart <[rlockhart@lkpd.org](mailto:rlockhart@lkpd.org)>  
**Subject:** RE: Former LPD Officer Brett Horner - need separation information

Rich:

We need to schedule a time that Josh (or another one of my prosecutors) and I can review former Officer Horner's complete personnel file at LPD.

Whether the State needs to make any disclosures to defense counsel in any pending case in which Mr. Horner was the affiant is something my office has to determine.

Please let me know when I can review Horner's file. Thank you, Suzanne



Suzanne Valdez (she/hers)  
District Attorney | District Attorney's Office  
phone: (785)841-0211  
email: [svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org)  
address: 111 E 11th St, Lawrence, KS 66044



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**From:** Rich Lockhart <[rlockhart@lkpd.org](mailto:rlockhart@lkpd.org)>  
**Sent:** Monday, May 23, 2022 5:22 PM  
**To:** DA - Valdez, Suzanne <[svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org)>  
**Subject:** RE: Former LPD Officer Brett Horner - need separation information

\*\*\*This message came from outside of the douglascountyks.org domain - please follow best security practices and use extreme caution before opening attachments or links.\*\*\*

Hi Suzanne,

What information in particular are you needing regarding his separation? If you let me know what you need, we will work on getting it to you.

The reasons for his separation are not related to any Brady Giglio issues.

Thanks  
Rich

From: [svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org) <[svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org)>  
Sent: Monday, May 23, 2022 4:54 PM  
To: Rich Lockhart <[rlockhart@lkpd.org](mailto:rlockhart@lkpd.org)>  
Subject: Former LPD Officer Brett Horner - need separation information  
Importance: High

Rich:

We still await information from you regarding the Lawrence Police Department's separation from former officer Brett Horner.

We have many serious cases pending in which Mr. Horner is an essential witness, including two rape cases set for hearing on June 16, 2022, and July 5, 2022 respectively.

Depending on the nature of the events that precipitated Mr. Horner's departure, we may not be able to continue with prosecution of these cases.

As you are well aware, knowledge of the existence of any potential *Giglio* material is imputed to the State, and we have an affirmative obligation to make the appropriate disclosures to defense counsel.

I would appreciate immediate attention to this matter.

Thank you,

Suzanne Valdez



Suzanne Valdez (she/hers)

District Attorney | District Attorney's Office

phone: (785)841-0211

email: [svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org)

address: 111 E 11th St, Lawrence, KS 66044



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**Subject:** FW: DA Brady/Giglio Policy - mediation session with Ret. Judge Kevin Moriarty

**From:** [svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org)

**Date:** May 23, 2022 at 4:39:32 PM CDT

**To:** [jarmbrister@dsso.org](mailto:jarmbrister@dsso.org), [mpatrick@baldwincitypd.org](mailto:mpatrick@baldwincitypd.org), [nelsonmosley@ku.edu](mailto:nelsonmosley@ku.edu), Rich Lockhart <[rlockhart@lkpd.org](mailto:rlockhart@lkpd.org)>, [wlovett@cityofeudoraks.gov](mailto:wlovett@cityofeudoraks.gov), [lmiller@stevensbrand.com](mailto:lmiller@stevensbrand.com), Toni Wheeler <[twheeler@lawrenceks.org](mailto:twheeler@lawrenceks.org)>, [dloomis@dakotaloomislaw.com](mailto:dloomis@dakotaloomislaw.com)

**Cc:** [Kevin@moriartymediation.com](mailto:Kevin@moriartymediation.com), [jseiden@douglascountyks.org](mailto:jseiden@douglascountyks.org)

**Subject:** DA Brady/Giglio Policy - mediation session with Ret. Judge Kevin Moriarty

~~Excluded (Name) are removed with all links and attachments.~~ - City of Lawrence IT Helpdesk

Hello, All,

I have asked Retired Johnson County Judge Kevin Moriarty to meet with the Chiefs, Sheriff, and me regarding implementation of the DA *Brady/Giglio* policy. The judge is available on June 3 when he will come to Douglas County to facilitate criminal mediation for the State in some serious felony cases. We will keep the afternoon of June 3 open for a joint meeting, which the judge will facilitate. Please let me know if you will attend, and bring your counsel if you wish. Let's plan at a 1:00 start. Meeting place TBD.

Ret. Judge Moriarty has decades of experience as a defense attorney, prosecutor, and judge. Since his retirement from the Johnson County bench, Judge Moriarty has continued to serve the state by handling criminal and other mediation work. I am hopeful that with Judge Moriarty's assistance, we can work out our differences while complying with our constitutional mandate required of *Giglio*. We need to work together in the interest of public safety, and I am confident that we can figure this all out.

Take care, Suzanne



Suzanne Valdez (she/hers)

District Attorney | District Attorney's Office

phone: (785)841-0211

email: [svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org)

address: 111 E 11th St, Lawrence, KS 66044



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**Subject:** FW: State v. Thomas Zarse - delicate matter  
**Attachments:** image001.png; image001.png; image002.png; image003.png; image004.png; Douglas County District Attorney's Brady-Giglio Policy.pdf

**From:** [svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org)  
**Date:** June 3, 2022 at 10:56:18 AM CDT  
**To:** "Jeremiah R. Risner" <[jrrisner@lkpd.org](mailto:jrrisner@lkpd.org)>, "Greg I. Pruett" <[Pruett@lkpd.org](mailto:Pruett@lkpd.org)>  
**Cc:** Joshua Seiden <[jseiden@douglascountyks.org](mailto:jseiden@douglascountyks.org)>  
**Subject:** State v. Thomas Zarse - delicate matter

Dear Officer Risner and Detective Pruett,

I am writing to let you know that for the Zarse trial we have endorsed and have issued a subpoena duces tecum to LPD Chief Lockhart for your personnel files. The reason for this is to ensure that neither of you have any potential *Giglio* material that could potentially affect the integrity of this case.

Josh and I are both confident that neither of you are *Giglio*-impaired, but Chief Lockhart has refused to comply with our *Brady/Giglio* policy so we must have him appear before the court and comply in that manner.

My sincerest apologies for having to go this route, especially when all your chief had to do was complete a checklist for both of you without involving the court. I've attached the DA *Giglio* policy in this email and the checklist is Appendix A of the document. Please review the 11 questions on the Checklist because these are the questions that will be asked of your chief on the record, unfortunately.

Please let me know if you have questions. I very much appreciate both of you and the work you do for our community.

Suzanne

Suzanne Valdez (she/hers)  
District Attorney | District Attorney's Office  
phone: (785)841-0211  
email: [svaldez@douglascountyks.org](mailto:svaldez@douglascountyks.org)  
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