



Brady Giglio Policy Frequently Asked Questions (FAQs)

Q: What is the Brady Giglio policy?

A: The Brady Giglio policy clarifies how Cook County Assistant State's Attorneys (ASA) will meet the legal requirements that require prosecutors to disclose any evidence that could be favorable to the defense.

Q: What is the purpose of the Brady Giglio policy?

A: The purpose of the Brady Giglio policy is to ensure both the integrity of prosecutions and to protect individuals' right to due process. Under the policy, prosecutors are required to disclose any information that could be favorable to the defense, including evidence that could be used to impeach the credibility of prosecution witnesses, including law enforcement officers.

Q: What is the origin of the Brady Giglio policy?

A: The Brady Giglio policy takes its name after two U.S. Supreme Court cases, *Brady v. Maryland* (1963) and *Giglio v. United States* (1972). In *Brady*, the Court held that prosecutors must disclose exculpatory evidence to the defense. In *Giglio*, the Court extended this duty to include impeachment evidence that could be used to challenge the credibility of prosecution witnesses.

Q: What are "Exculpatory evidence" and "Impeachment information?"

A: "Exculpatory evidence" is any evidence that could be favorable to the defense, and "impeachment information" is information that could be used to challenge the credibility of the prosecution.

Q: What type of impeachment information could a disclosure include?

A: Impeachment information includes but is not limited to whether the witness has any pending cases or is on probation or supervision, any prior inconsistent statements made by the witness, a witness' prior inaccurate or unsuccessful attempts at identifying the offender, and whether the witness has received or expects to receive any benefits from the prosecution.

Q: Is impeachment information limited to just that known by the ASA?

A: ASAs are responsible not only for impeachment information known to them, but also for information known to law enforcement witnesses, and materials contained in law enforcement records discovered through due diligence.

Q: Will a witness not be called to testify if a disclosure about that witness is made?

A: Witnesses are called to testify at trial on a case-by-case basis based on the facts and evidence of the case, and what is needed to prove beyond a reasonable doubt that a defendant is guilty.

Q: Can disclosed information be used at trial?

A: ASAs are required to disclose discovery information to the defense, however, those disclosures may not be admissible and be used at trial. ASAs will take all necessary steps to bar or limit the use of the information at trial.



Q: What is the process to determine if disclosure of impeachment evidence must be made?

A: Generally, once impeachment information is discovered, the ASA alerts their supervisor and/or bureau chief. The bureau chief, ASA, and the ASA's supervisor will consult with the Chief Ethics Officer about the matter. The Chief Ethics Officer determines by a preponderance standard, more likely than not, whether the disclosure is required and how any disclosure will occur.

Q: How quickly must the prosecution make a disclosure?

A: As soon as practicable.

Q: How does the CCSAO track witness disclosures?

A: The Chief Ethics Officer will keep, maintain, and update as needed, a database of officers that are subject to disclosure and the reason for the disclosure requirement that every ASA can access.

Q: Does the CCSAO decide to never call some witnesses in future trials?

A: The CCSAO can decide to not call a law enforcement officer or governmental employee as a witness in a trial or hearing or use the witness as an affiant on any search warrants or other legal process.

Q: How is that decision made?

A: The State's Attorney, after consultation with the Chief Ethics Officer and CCSAO leadership, makes the final decision.

Q: Does a list exist of people who will not be called as a witness?

A: Under the Brady Giglio policy, the CCSAO shall maintain two lists involving law enforcement and expert witnesses who required disclosures.

- The "Disclosure List" will serve as a database internal to the CCSAO and contain witnesses subject to disclosure due to potentially impeaching material. Even though a disclosure has been made, the individual can still testify if the CCSAO believes that the individual's testimony will not lessen the integrity of the prosecution.
- The "Do Not Call List" will serve as a publicly available database containing the names of law enforcement officers that the CCSAO will not call as witnesses in any proceeding due to various factors including but not limited to current and past conduct investigations, allegations of misconduct, and officers who have been stripped of their police powers.

The "Do Not Call List" can be accessed at cookcountystatesattorney.org/bradygiglio.