

IN THE SOVEREIGN LAND OF SEARCY COUNTY, ARKANSAS THE STATE,  
THE UNITED STATES OF AMERICA, THE REPUBLIC, NON-FEDERAL AND NON-  
CORPORATE AND NON-COMMERCIAL; AND UNDER ONLY THE "AMERICAN  
FREE FLAG OF PEACE AND NOT THE MARITIME-ADMIRALTY FLAG OR  
JURISDICTION

Styled as:



IN THE CIRCUIT COURT OF SEARCY COUNTY, ARKANSAS  
FIRST DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR 98-9

Jerry F. Kirk

*\* Have you noticed that my  
name is in upper & lower case?*

CITIZEN

MOTION FOR DISCOVERY

Under threat, duress, coercion, of injury, loss of life, threat of and in fact a loss of right to pursue happiness and being forced to damage or break the 'LAW OF YAWH,' comes Jerry F. Kirk, a.k.a. Jerry Francis Kirk, not and non 'pro-se,' being a 'free-born' native, Florida, the State, Republic-citizen-white-adult-male,' and thus a 'Citizen-of-the-United States-of-America-the-Republic' with inhabitance and not 'residence' in Searcy County, Sovereign, Arkansas-the-State-Republic' and with the non-comparable, non-adequate, un-even 'playing field,' in violation of my 'United States of America-Republic Constitutional Right(s)' the assistance of counsel, Stephen D. Ralph

Comes now indigent Citizen Jerry F. Kirk, and pursuant to Ark. R. Cr. P. Rules 17.1 17.2, 173.3 and 19.2, and Due Process Clauses of the 14th Amendment and Ark. Const. Art. 2, Sec. 8 and 21, requests the State to timely disclose (ASA) the following material and/or information which is or may come within the possession, control, or knowledge of the prosecuting attorney:

1. The names, addresses and phone numbers of all person whom the prosecutor intends to call as witnesses at any hearing or at trial. See Rule 17.1 (a) (I); Thompson v. State, 322 Ark. 586, 910 S.W.2d 694 (1995); Birtchett v. State, 298 Ark. 16, 708 S.W.2d 625 (1986); Lewis v. State, 285 Ark. 372, 691 S.W.2d 864 (1985).

2. Any written or recorded statements and the substance of any oral statements made by the Citizen or any co-Citizens or a witness. See Rule 17.1 (a) (ii); Williamson v. State, 263 Ark. 401, 565 S.W.2d 415 (1978); Mitchell v. State, 295 Ark. 341, 750 S.W.2d 936 (1988); Reed v. State, 312 Ark. 82, 847 S.W.2d 34 (1993); Bennett v. State, 297 Ark. 160, 761 S.W.2d 148 (1988); Browning v. State, 274 Ark. 13, 621 S.W.2d (1981); Earl v. State, 272 Ark. 5, 612 S.W.2d 98 (1981).

3. Those portions of grand jury minutes containing the testimony of the Citizen. See Rule 17.1 (a) (iii).

4. Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations, scientific tests, experiments, or comparisons. See Rule 17.1 (a) (iv); Thompson v. State, 322 Ark. 586, 910 S.W.2d 694 (1995) (**medical report**); Hunter v. State, 316 Ark. 63, 875 S.W.2d 63 (1994) (**DNA testing**); Burton v. State, 314 Ark. 317, 862 S.W.2d 252 (1993) (**chemical analysis**); Yates v. State, 303 Ark. 79, 794 S.W.2d 133 (1990) (**polygraph examination**); Dumond v. State, 294 Ark. 379, 743 S.W.2d 779 (1988) (**fingerprint analysis**). Also see Burton v. State and Mosley v. State, 322 Ark. 244, 914 S.W.2d 731 (1996) (It is the prosecutor's duty to provide reports of scientific tests and any information and material concerning the witness to be called in relation to the testing).

5. Any books, reports, documents, photographs, or tangible objects which the prosecutor intends to use in any hearing or at trial or which were obtained from or belong to the Citizen. See Rule 17.1 (a) (v); Brenneman v. State, 264 Ark. 460, 573 S.W.2d 47 (1978) (**papers and items alleged from house**); Weber v. State, 326 Ark. 564, 933 S.W.2d 370 (1996) (**statement by child witness**); Lear v. State, 278 Ark. 70, 643 S.W.2d 550 (1982) (**highway atlas and .22 shells**); Horne v. State, 12 Ark. App. 301, 677 S.W.2d 856 (1984) (**photograph and x-ray**); Plummer v. State, 270 Ark. 11, 603 S.W.2d 401 (1980) (**copies of judgments of conviction for sentence enhancement**).

6. Any record of prior criminal convictions of witnesses (and potential witnesses) whom the prosecutor intends to call at any hearing or trial. See Rule 17.1 (a) (vi). Hall v. State, 306 Ark. 329, 812 S.W.2d 688 (1991); Johnson v. State, 303 Ark. 313, 796 S.W.2d 342 (1990); Shuffield v. State, 23 Ark. App. 167, 745 S.W.2d 630 (1988) (**the prosecutor must directly respond either by listing the criminal convictions of potential witnesses or stating that no record of convictions had been found after a diligent, good-faith effort by the prosecuting attorney to obtain such information from other governmental personnel**).

7. Any criminal records or allegations of misconduct against witnesses whom the prosecutor intends to call at any hearing or at trial. Sheffield v. State, supra.

8. To timely inform Citizen of:

(I) the substance of any relevant grand jury testimony. See Rule 17.1 (b) (I); Clements v. State, 303 Ark. 319, 796 S.W.2d 841 (1990) (prosecutor's failure to timely produce the grand jury testimony of a key state witness prevented the defense from effectively impeaching the witness' in-court identification).

(ii) whether, in connection with this case, there has been any electronic surveillance of the Citizen's premises or of conversations to which he was a party. See Rule 17.1 (b) (iii);

(iii) the relationship to the prosecutor of persons whom the prosecutor intends to call as witnesses. See Rule 17.1 (b) (iii);

9. To promptly disclose and permit the inspection, testing, copying and photocopying of any relevant material regarding:

(I) any specific searches and seizures. See Rule 17.1 © (I); Lucach v. State, 310 Ark. 38, 834 S.W.2d 642 (1992) (the rule is explicit that testing be allowed but it must be timely voiced); and

(ii) acquisition of specific statements from the Citizen. See Rule 17.1 © (ii); Yates v. State, 303 Ark. 79, 794 S.W.2d 133 (1990) (Statements and other materials made during a polygraph examination of Citizen).

10. To promptly disclose all materials or information within the knowledge, possession, or control of the prosecutor which tends to negate the guilt of the Citizen as to the offense charged or would tend to reduce the punishment therefor.<sup>1</sup> See Rule 17.1(d);<sup>2</sup> Smith v. State, 326 Ark. 520, 932 S.W.2d 753 (1996); Mills v. State, 322 Ark. 647, 910 S.W.2d 682 (1995); Johnison v. State, 317 Ark. 431, 878 S.W.2d 727 (1994); Scroggins v. State, 312 Ark. 106, 848 S.W. 2d 400 (1993); Yates

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<sup>1</sup> The Due Process Clause of the Fourteenth Amendment requires the prosecutor to disclose to the defense all exculpatory evidence, see Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and all impeachment evidence, see U.S. v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

<sup>2</sup> This rule incorporates the due process requirement that exculpatory [and impeachment] evidence favorable to a Citizen on issues of guilt or punishment must be disclosed by the prosecutor, representing an extension of the Brady v. Maryland mandate. See Yates v. State, 303 Ark. 79, 794 S.W.2d 876 (1996).

v. State, 303 Ark. 79, 794 S.W.2d 133 (1990); Alford v.State, 291 Ark. 243, 724 S.W.2d 151 (1987); Farmer v. State, 54 Ark. App. 66, 923 S.W.2d 876 (1990).

11. To timely disclose the existence of all information and evidence which tend to negate the guilt of the accused or mitigates the offense charged, and which would tend to reduce or mitigate the punishment of the accused. See Ark. Model Rules of Professional Conduct, Rule 3.8 (d) and the ABA Standards for Criminal Justice. Prosecution Function and Defense Function, 3-3.11 (a) (3rd ed. 1993).

Necessity for Complete Compliance

12. Pursuant to this Motion Citizen is requesting complete discovery, Plummer v. State, 270 Ark. 11, 603 S.W.2d 402 (1980), in order to fully utilize his discovery rights. Malone v. State, 292 Ark., 729 S.W.2d 167 (1987).

13. Citizen requests that all this requested discovery, exculpatory, and impeachment material and information be timely disclosed in order to permit the defense's beneficial use of it. See Brady v. State. 322 Ark. 178, 908 S.W. 2d 88 (1995); Clements v. State, 303 Ark. 319, 796 S.W. 2d 841 (1990); Bennett v. State, 297 Ark. 115, 759 S.W.2d 799 (1988); Malone v. State, supra; Lewis v. State, 286 Ark. 372, 691 S.W.2d 864 (1985); Dupree v. State, 271 Ark. 50, 607 S.W.2d 356 (1980). This is very important because if a discovery violation becomes known or evident shortly before trial or during trial, a continuance will not provide sufficient time to negate or cure the state's violation due to the following:

(a) It is the policy of the defense to thoroughly interview potential state witnesses (which also requires their addresses) and thereafter to investigate them and the evidence they contribute to the state's case as to reliability, credibility, and any interest or bias they may have in order to prepare to meet, refute and/or impeach their testimony;

(b) It is the policy of the defense to thoroughly review and analyze statements attributed to the Citizen or any co-Citizen and thereafter to investigate the circumstances and any witnesses to such statements (as to reliability, credibility and/or bias and interest), in order to prepare, meet, refute, and/or impeach such alleged statements.

© It is the policy of the defense to thoroughly review and analyze any grand jury testimony attributed to the Citizen and thereafter to investigate the circumstances of such testimony as to reliability or credibility in order to prepare, meet, refute, and/or explain such testimony;

(d) The defense is entitled to a full and fair opportunity to conduct experiments, comparisons, examinations, tests, analysis, observation, reenactments, studies, and other procedures in order to challenge results or conclusions by the State, Dumond v. State, supra;

(e) It is the policy of the defense to thoroughly inspect, examine, review, analyze, investigate, and test (when relevant) any books, papers, documents, photographs, or tangible objects which the state intends to use (as to reliability, credibility, or other factors bearing on such evidence) in order to prepare, meet, refute, and/or impeach such items;

(f) It is the policy of the defense to thoroughly investigate convictions of potential witnesses regarding their underlying conduct since, in many instances, conviction for a specific offense does not always reflect the full underlying conduct (i.e. due to plea bargaining, jury conviction of a lesser offense, or dismissal of charges for being an informant).<sup>3</sup>

(g) It is the policy of the defense to thoroughly review and analyze any grand jury testimony against the Citizen, and then to investigate the circumstances of such testimony as to its reliability, credibility, interest, or bias, in order to prepare, meet, refute, and/or explain such testimony.

(h) It is the policy of the defense to thoroughly review and analyze any electronic surveillance relating to the Citizen, and thereafter to investigate the same as to reliability, credibility, and interest or bias, in order to prepare, refute, and/or explain such evidence.

(i) It is the policy of the defense to investigate and meet, refute, and/or impeach the bias of the state's witnesses who may be related to the prosecutor.

(j) It is the policy of the defense to thoroughly investigate all exculpatory and impeachment information and materials in order to effectively impeach, discredit, or cast doubt on law enforcement officials, the prosecution, witnesses, informants, other persons, and on any physical evidence introduced by the State, or to show or demonstrate circumstances, facts, or other evidence which is or may impeach, undermine, or be contrary to the state's case or theory.

(l) Ark. R. Civ. P. Rule 19.2 imposes a continuing duty on the prosecutor to disclose discoverable evidence, Mosely v. State, 323 Ark. 244, 914 S.W.2d 731 (1996); Nooner v. State, 322 Ark. 87, 907 S.W.2d 677 (1995), including exculpatory and impeachment evidence. Mills v. State,

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<sup>3</sup> At a minimum, relevant court record (bill of information, judgment of conviction, and other documentation in the court file), the police, the prosecutor, and witnesses will be consulted in regard to accuracy and relevant information about such witnesses.

322 Ark. 647, 910 S.W.2d 682 (1995); Lewis v. State, 286 Ark. 372, 691 S.W.2d 864 (1985).

14. The prosecutor must timely provide all the information and materials requested herein, and to allow or provide copying, examination, and testing thereof, because:

First, knowledge of the police is imputed to the prosecutor. Estmeyer v. State, 325 Ark. 491, 930 S.W.2d 302 (1996); Birchett v. State, supra; Lewis v. State, supra; Browning v. State, 274 Ark.13, 621 S.W.2d 688 (1981); Lacy v. State, 272 Ark. 333, 614 S.W.2d 235 (1981); Dupree v. State, supra; Shuffield v. State, 23 Ark. App. 167, 745 S.W.2d 630 (1988).

Second, Ark. R. Civ. P. Rule 17.3 requires the prosecutor to obtain any information that is in the control, possession, or knowledge of another governmental agency or personnel.<sup>4</sup> Bussard v. State, 295 Ark. 72, 747 S.W.2d 71 (1988); Dever v. State, 14 Ark. App. 107, 685 S.W.2d 518 (1985); Shuffield v. State, supra.

Third, the prosecutor cannot claim he has complied with discovery because he has an open file policy. Robinson v. State, 317 Ark. 512, 879 S.W.2d 419 (1994); Busssard v. State, supra. See Earl v. State, supra.

Fourth, all evidentiary materials and information employed at the trial by the prosecution must be identical to that which was produced in discovery. Robinson v. State, supra.

Fifth, the prosecutor has an affirmative duty to discover and to disclose all exculpatory evidence. Kyles v. Whitley, 524 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

Sixth, whenever it is essential to prove a negative, the burden is upon the party who alleges it unless the means of making the proof are in control of the opposite party. Austin v. Dermott Canning Co., 182 Ark. 1128, 32 S.W.2d 773 (1931).

WHEREFORE, Citizen requires an Order directing the State to timely disclose (just as soon as practicable) the existence of all the discovery, exculpatory, and impeachment material, information, etc., that has been requested in this motion in order to permit the defense's beneficial use of it as specifically declared herein.

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<sup>4</sup> Of course, the prosecutor's obligation extends to material and information within the possession and control of members of his staff or others who have participated in the investigation or evaluation of the case and regularly report or have reported to him. Thompson v. State, 274 Ark. 17, 621 S.W.2d 690 (1981).

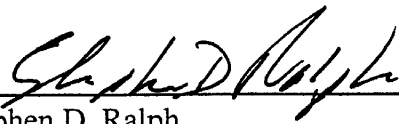
*5/20/98*  
*T.P.C.*  
*under protest*  
Jerry F. Kirk, Sui Juris  
Calf Creek Township  
Section 19, Township 14N, Range 17W  
Searcy County, Arkansas  
Non-Resident, Non-Domestic Delivery  
c/o HC 75, Box 267  
Witts Springs, Arkansas Republic  
United States of America

E-7

Stephen D. Ralph #91138  
Assistance of Counsel  
835 Faulkner  
Conway, AR 72032  
501 327-7404

Certificate of Service

I hereby certify that a true and correct copy of the foregoing pleading has been deposited with the Prosecuting Attorney, Doug Daniel, Searcy County Courthouse, Marshall, AR, on this 20th day of May, 1998.

  
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Stephen D. Ralph

