

[CAPTION]

**MOTION TO REVEAL AGREEMENTS ENTERED INTO BETWEEN THE
STATE AND PROSECUTION WITNESSES**

The Defendant, by counsel, respectfully requests this Court to order the State to investigate and disclose all of the following within the possession, custody, control, or the existence of which is known or by the exercise of due diligence could become known to the State:

1. Any and all consideration or promises of consideration given or offered to prospective State witnesses by law enforcement officers. By "consideration", Defendant refers to absolutely anything of value or use, including but not limited to immunity grants, fees, contributions to witness' jail commissary account, clothing, food, shelter, treatment or maintenance of a drug addiction, assistance to members of witness' family or associates of witness, special or favorable treatment as an inmate or pretrial detainee in the [JAIL/CONNECTIONAL FACILITY], plea agreements, promises of non-prosecution or deferred prosecution, recommendations regarding parole, clemency or prosecutions in other jurisdictions, or anything else which could arguably create an interest or bias in the witness in favor of the State or against the defense or act as an inducement to testify or to color testimony; whether or not expressly connected to this case;

2. Any and all prosecutions, investigations or possible prosecutions pending or which could be brought against the witness and any probationary, parole or deferred prosecution status of the witness; and

3. The same information requested in Items 1 and 2 above with respect to each non-witness whose statements are offered in evidence.

(Signature)

CASE LAW

CASEBANK M.2.b.6

Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (prosecutor has duty to disclose to defendant deals made with a State's witness and is responsible for all the information in possession of the police). See also Penley State, 734 N.E.2d 287 (Ind.Ct.App. 2000).

Kyles v. Whitley, 514 U.S. 419, 433-34 115 S.Ct. 1555 (1995) (impeachment evidence is material evidence that must be disclosed; because net effect of evidence withheld by prosecution, including conflicting eye- witness statements, records of ever-changing exchanges between police and informer, and internal police memorandum, raises reasonable probability of different result at trial if they had been revealed, habeas petitioner is entitled to new trial).

Banks v. Dretke, 540 U.S. 668, 124 S.Ct 1256, 157 L.Ed.2d 1166 (2004) (State should have disclosed that one of the witnesses was a paid police informant; the other was extensively coached by the police and prosecutors).

McBroom v. State, 530 N.E.2d 725, 729 (Ind. 1988) (prosecutor has duty to disclose "deals" made with a State's witness).

Carey v. State, 275 Ind. 321, 416 N.E.2d 1252 (1981) (deals include promises, grants of immunity, or rewards in exchange for testimony).

Bell v. State, 655 N.E.2d 129 (Ind.Ct.App. 1995) (any plea agreement entered into by a State's witness is relevant even if the agreement does not expressly state that the witness must testify).

Ferguson v. State, 670 N.E.2d 371, n.1 (Ind.Ct.App. 1996) (evidence of any understanding, not just expressed agreements, should be disclosed to the defense).

Wright v. State, 690 N.E.2d 1098 (Ind. 1997) (acknowledging the importance of fully disclosing express plea agreements or understandings between the State and witnesses, even where those agreements are not reduced to writing), *implicitly overruled on other grounds recognized by* Fuller v. State, 875 N.E.2d 326 (Ind.Ct.App. 2007).

Williams v. State, 714 N.E.2d 644 (Ind. 1999) (it is wholly unreasonable to expect the Defendant to conduct repeated, periodic depositions or inquiries to ensure that agreement has not been made with every witness; rather, prosecutor's nondisclosure of "deal" with witness is tantamount to its suppression).

Commonwealth v. Strong, 761 A.2d 1167 (Pa. 2000) (a majority of the Pennsylvania Supreme Court held that the State's cooperative relationship with a prosecution witness need not reach the level of a formal agreement for leniency in exchange for testimony in order to trigger the State's obligation to make the relationship known to the defense; the fact that a witness has been encouraged to hope for lenient treatment as a reward for testifying is enough). But see Rubalcada v. State, 731 N.E.2d 1015 (Ind. 2000).

Rowe v. State, 704 N.E.2d 1104 (Ind.Ct.App. 1999) (reversing because State failed to disclose that one of its star witnesses had been convicted of burglary and theft and was still on probation at time of his testimony).

State v. Bowens, 722 N.E.2d 368 (Ind.Ct.App. 2000) (post-conviction relief was properly granted where prosecution suppressed evidence of agreement between prosecution and the State's key witness).

Deatrick v. State, 181 Ind.App. 469, 392 N.E.2d 498 (1979) (promise by the prosecuting attorney to

submit a parole recommendation in behalf of the witness is proper evidence for impeachment).

Guise v. State, 171 Ind.App. 680, 359 N.E.2d 269 (1977) (reversible error for trial judge to prohibit the Defendant from asking a witness if he was being paid to testify).

Standifer v. State, 718 N.E.2d 1107 (Ind. 1999) (Defendant had the right to cross examine one of the State's witnesses about his status as a parolee and another State's witness about this status as a confidential informant).

Goodner v. State, 714 N.E.2d 638 (Ind. 1999) (Ind. Professional Conduct Rule 3.8 (d) requires prosecutor to make timely disclosure to defense of all evidence or information known to prosecutor that tends to negate guilt of accused or mitigates offense; characterizing recurring scenario of belated disclosures by prosecutors as "highly problematic," the Court indicated that continued abuses of this sort may require prophylactic rule requiring reversal; in the meantime, the Court reminded members of the bar and the bench of their obligation under Prof. Cond. R. 8.3 (a) to report such misconduct to the appropriate authorities).

Donnegan v. State, 889 N.E.2d 886 (Ind.Ct.App. 2008) (express plea agreements or understandings between State and its witnesses must be fully disclosed, even if those agreements are not reduced to writing).

Tolliver v. State, 922 N.E.2d 1272 (Ind.Ct.App. 2010) (while confirmed promises to witnesses for leniency must be revealed, preliminary discussions are not subject to mandatory disclosure; hopes and expectations of State's witness coupled with evidence of a prosecutor-witness deal occurring after the testimony are not subject to mandatory disclosure).

Thomas v. State, 965 N.E.2d 70 (Ind.Ct.App. 2012) (a prosecutor must disclose to jury any agreement made with a witness and any promises, grants of immunity, or rewards offered in return for testimony; evidence that accomplice who testified against Defendant received lowest possible sentence did not establish an agreement between the State and accomplice that required to be disclosed to jury in federal murder prosecution).

Reid v. State, 984 N.E.2d 1264 (Ind.Ct.App. 2013) (Defendants were not prejudiced by State failing to disclose impeachment evidence that witness had previously been convicted of armed robbery where witness's testimony merely corroborated victim's statement to police and was merely cumulative of the other evidence linking Defendants to crimes, and where impeachment evidence concerned 24-year-old conviction for offense witness had committed as a teenager).

Fox v. State, 997 N.E.2d 384 (Ind.Ct.App. 2013) (State did not suppress statements of responsibility and plea agreements of State's witness in unrelated federal case in violation of Brady, where record reflected that State turned over all relevant documents in its possession to Defendant, and State had no duty to obtain additional documents from federal prosecutor beyond what it was given).

McKnight v. State, 1 N.E.3d 193 (Ind.Ct.App. 2013) (State did not commit Brady violation at drug trial by failing to disclose that State's witness had prior theft conviction, since evidence was not material; theft conviction was ten years old, and witness admitted on cross examination that she had been cooperating with police and participating in a controlled buy because she was "in trouble" and was trying to avoid possible criminal charges).