

S206350

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

RIVERSIDE COUNTY SHERIFF'S  
DEPARTMENT,  
Respondent/Plaintiff,

vs.

JAN STIGLITZ,  
Defendant,

KRISTY DRINKWATER,  
Real Party in Interest and  
Appellant,

RIVERSIDE SHERIFF'S ASSOCIATION,  
Intervener and Appellant.

Case Number: S206350

After a Decision by the Court of Appeal of the State of California, Fourth Appellate  
District, Division Two  
Case No. E052729  
(Super.Ct.No. RIC 10004998)

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**APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE  
AND BRIEF OF AMICI CURIAE CALIFORNIA STATE  
ASSOCIATION OF COUNTIES, AND THE CALIFORNIA LEAGUE  
OF CITIES IN SUPPORT OF RESPONDENT/PLAINTIFF**

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**APPLICATION FOR PERMISSION TO FILE  
AMICUS CURIAE BRIEF**

TO THE HONORABLE TANI CANTIL-SAKUYE, CHIEF  
JUSTICE AND THE ASSOCIATE JUSTICES OF THE CALIFORNIA  
SUPREME COURT:

Pursuant to Rule 13(c) of the California Rules of Court, Amicus Curiae, The California State Association of Counties, (hereinafter referred to as “CSAC”), and the League of California Cities, (hereinafter referred to as the “League”) submit this Application to file this Amicus Curiae brief with the Supreme Court of California, Supreme Court No. S206350 (4<sup>th</sup> District Court of Appeal, Division 2, Appeal No. EO52729 [Order granting writ petition reversed, and the trial court directed to deny petition on September 28, 2012]) (Superior Court case no. RIC 1004998 [Judgment granting writ of Respondent (Riverside County Sheriff’s Department on June 22, 2010 (J.A. 194)] in support of the position of Riverside County Sheriff’s Department, Respondent and Plaintiff, (hereinafter “RCSD” or Respondent) before the Supreme Court in the instant matter (*Riverside County Sheriff’s Department v. Jan Stiglitz*, Defendant, *Kristy Drinkwater*, Real Party in Interest, et al.).

CSAC is a non-profit corporation. The membership consists of 58 California counties. CSAC sponsors a Litigation Coordination Program which is administered by the County Counsel’s Association of California



and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League of California Cities is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC and the League believe their perspective on this case is worthy of the Court's consideration and that it will assist the Court in deciding the matter. Counsel has examined the briefs on file and is familiar with the issues involved, the scope of their presentation, and does not seek to duplicate the briefing. However, Amici believe there is a need for additional briefing on the underlying issue of the confidentiality of peace officer personnel files, and hereby request that leave be granted to allow the filing of this Amicus Curiae Brief.

## INTRODUCTION

The question before this Court is whether an administrative officer, who may or may not have any judicial training or expertise on the complicated law surrounding peace officer privacy and due process rights, may rule on a *Pitchess* motion that would result in the release of information that would otherwise be confidential. Amici -- California State Association of Counties (“CSAC”) and the League of California Cities (the “League”) -- believe the answer to that question is no. Upon a close review of the relevant statutory scheme, it is apparent that the Legislature intended that only a “judicial officer” can rule on a *Pitchess* motion. To open the door to *Pitchess* discovery in varied administrative proceedings where hearing officers, who need not have any legal training, are authorized to rule on *Pitchess* discovery goes far beyond what the Legislature intended when creating the limited exceptions to discovery of peace officer personnel records. The Legislature intended to protect the information contained within personnel files with the clear statutory language as reflected in *Pitchess v. Superior Court* (1974) 11 Cal. 3d 531.

Rather than permitting the administrative officers to rule on *Pitchess* motions, the statutory scheme limits *Pitchess* discovery in an administrative hearing to, the initial finding of relevancy by the hearing officer/panel. The final decision regarding disclosure of confidential peace officer’s records

remains with a judicial officer. Therefore, Amici urge the Court to reverse the Court of Appeal's decision and hold that *Pitchess* motions may only be decided by a judicial officer.

### ISSUE GRANTED FOR REVIEW

The Court has limited review to the following issue:

“Does the hearing officer in an administrative appeal of the dismissal of a correctional officer employed by a county sheriff's department have the authority to grant a motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531?”

### STATEMENT OF CASE

Amici join in Respondent County of Riverside Sheriff's Department statement of the case at pages 1-3 of Petitioner's Opening Brief.

### ARGUMENT

#### **I. THE STATUTORY SCHEME EVIDENCES AN INTENT BY THE LEGISLATURE TO LIMIT ADMINISTRATIVE OFFICER REVIEW TO THE RELEVANCY OF A *PITCHESS* MOTION, AND TO REQUIRE THE MOTION ITSELF TO BE DETERMINED BY A JUDICIAL OFFICER**

One of the fundamental purposes underlying the statutory *Pitchess* motion procedure is to protect the affected officer's right of privacy in his or her personnel records. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 83-84 [statutory scheme includes “forceful directive” to consider privacy interests of the officers whose records are sought].)

Evidence Code section 1043 sets forth guidelines or instructions on how and where to file a *Pitchess* motion, what information the motion should include, and a brief description of the information that should be contained in an affidavit showing good cause (relevancy), as if it were an administrative handbook. This may explain why the only place in the *Pitchess* statute the words “an administrative body” are found, is in Evidence Code section 1043. In contrast, Evidence Code section 1045 sets forth the procedures, directions, instructions and authorizations for deciding or ruling on a *Pitchess* motion such as: in chambers examination in conformity with Evidence Code section 915; the various factors to consider when determining what information shall be discoverable; instructions to the court to make any order which justice requires for protection, and specifying that the records disclosed may not be used for any purpose other than a court proceeding. In effect, the statute reads like a judge’s bench book.

If the meaning or the application of the *Pitchess* statutes were interpreted in this manner, an administrative hearing officer (generally a lay-person) would be allowed to rule on the relevancy of a *Pitchess* motion to the case at hand in an administrative hearing, and the court (a judicial officer) would rule on the *Pitchess* motion by applying the applicable law.

Therefore, when a *Pitchess* motion (submitted pursuant to the guidelines set out in Evidence Code section 1043) is filed in a Government Code Section 3304, subdivision (b) hearing, the administrative hearing officer would be allowed to rule on the relevancy of the *Pitchess* discovery. If the administrative hearing officer rules the *Pitchess* discovery is relevant to the case at hand, the requesting party can seek a writ with the Superior Court for a ruling by the court pursuant to the procedures set forth in Evidence Code section 1045. This would provide the requisite due process rights afforded to peace officers in disciplinary hearings under Government Code section 3304(b) by someone authorized by the Legislature to make such a determination.

This procedure allows Government Code section 3304, and Evidence Code sections 915, 1043, and 1045 to work together in harmony. The Fourth Appellate District has already noted the safeguards for judicial review. Code of Civil Procedure section 1094.5, subdivision (a), which provides for review of final administrative rulings only, has the irreparable harm exception. The irreparable harm exception would allow the court to hear the *Pitchess* motion before the hearing officer makes a final ruling, as well as, Evidence Code section 1045, subdivision (d) which provides that the affected officer(s) may file a motion seeking an order for protection from unnecessary annoyance, embarrassment or oppression. These safeguards show the Legislature's intent that information regarding the

personnel files of peace officers is protected. In disciplinary hearings, non-involved peace officers personnel records may be relevant. Thus, only someone with expertise in the field of law can make the determination to release that information so as not to cause irreparable harm to a peace officer. This is critical because, as noted by the Fourth Appellate District, Division Two, loss of privacy can constitute irreparable harm. (*Clear Lake Riviera Community Assn. v. Cramer* (2010) 182 Cal.App.4th 459, 473.)

**A. PEACE OFFICER PERSONNEL RECORDS ARE  
CONFIDENTIAL AND PRIVILEGED AND NOT SUBJECT TO  
DISCLOSURE WITHOUT JUDICIAL REVIEW**

The Legislature intended a broad notion of confidentiality of peace officer personnel records. Penal Code section 832.7, subdivision (a), provides in part “[p]eace officer or custodial officer personnel records maintained by any state or local agency pursuant to § 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.” Local county sheriffs and police chiefs have historically taken a very strong public policy position for the preservation of a peace officer’s privilege of confidentiality of his or her personal information.

Penal Code section 832.8 defines personnel records as relating to any of the following:

- (a) Personal data, including marital status, family members, education and employment history, home addresses, or similar information.
- (b) Medical history.
- (c) Election of employee benefits.
- (d) Employee advancement, appraisal, or discipline.
- (e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.
- (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

Thus the information contained in such files may include information including background character information, pre-employment testing, psychological evaluations, discipline, training, and similar information of a personal nature that, if disseminated, may create a safety issue for the officer or his family as well as an invasion of privacy. The Legislature recognized that peace officers require heightened protection of their personal information, such as a home address, as that information, if disclosed outside of the administrative hearing or commission review by a non-judicial officer, would be a violation of the officer's privacy rights.

Only a judicial officer has the authority to interpret these laws and determine where there is good cause or a statutory exception that would permit disclosure.

In *San Diego Police Officers Assn. v. City of San Diego Civil Service Com.* (2002) 104 Cal.App.4th 275, a case involving the routine disclosure of peace officer records in a public Civil Service Commission, the court, citing to *City of Richmond v. Superior Court* (1995) 32 Cal.App.4th 1430, found that “Penal Code section 832.7’s statutory language demonstrates that the Legislature was intending to recognize the confidentiality of peace officer personnel records regardless of the context in which the records were sought.”(Emphasis added.) *City of Richmond* was a California Public Records Act (CPRA) case wherein a newspaper requested personnel records pertaining to an investigation of a police officer. The court disagreed that Penal Code section 832.7 was limited to civil or criminal proceedings. The *San Diego* court further stated:

“Although the Legislature could have merely stated the personnel records shall not be disclosed in civil and criminal proceedings except by *Pitchess* procedures (as codified in the Evidence Code sections), it first provided—in an independent clause—that the records are “confidential.” (§ 832.7, subd.(a).) In construing a statute we are required to give independent meaning and significance to each word, phrase, and sentence in a statute and to avoid an interpretation that makes any part of a statute meaningless. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, - 1386-1387, *citation omitted.*) If the Legislature intended merely to restate *Pitchess* procedures under



which civil or criminal discovery is permitted, there would be no need to include the word “confidential” in section 832.7, subdivision (a). (See *Rosales v. City of Los Angeles* (2000) 82 Cal.App.4th 419, citation omitted. [“The term ‘confidential’ in Penal Code section 832.7 has independent significance”]).” (*San Diego Police Officers Assn. v. City of San Diego Civil Service Com.* (2002) 104 Cal.App.4th 275.)

The court disagreed with the contention by the City and County of San Diego (*Public Entities*) that Penal Code section 832.7 is inapplicable because the *Pitchess* discovery procedures, codified in Evidence Code sections 1043 and 1046, are irrelevant to an agency that holds the personnel files. The court went on to state : “We agree that requiring *Public Entities* to satisfy *Pitchess* procedures before disclosing records seems illogical because the information presented to the civil service commission is already in possession of either the complaining police officer or the responding agency. A request for discovery is, therefore, generally not at issue and the *Pitchess* procedures identified in section 832.7, subdivision (a) (by reference to Evidence Code sections) are inapplicable as the statute is currently written. However, as explained above, because we have concluded that the correct interpretation of the statute is that the Legislature intended to establish that personnel records are confidential and then created a limited exception in the civil/criminal discovery context, the fact that *Pitchess* procedures do not logically apply here does not render the disclosure prohibition inapplicable. (See *Hackett v. Superior Court* (1993)

13 Cal.App.4th 96, 100 [“Although it is clear the [statute] was conceived as a legislative response to *Pitchess* ..., it is equally clear from its plain language ..., [that the statute] was intended to create a privilege for all information in peace officers’ personnel files.”]

The Court found the holding in *San Francisco Police Officers’ Assn. v. Superior Court* (1988) 202 Cal.App.3d 183, 191, fully consistent with the holding above. The facts of that case are similar to the present case: an individual attempting to seek the confidential personnel records of an officer in a hearing, regardless of the reason. The *San Francisco Police Officer’s Association* case challenged a rule permitting the individual who complained about a police officer’s conduct to be present at the confidential investigation hearing and to have access to the decision and materials. The court denied the challenge and was emphatic that the fact finding process of the San Francisco Commission was confidential. The Court concluded that Penal Code section 832.7 provides that peace officer personnel records, as defined in Penal Code section 832.8, are confidential. In the administrative disciplinary appeal context, Penal Code Section 832.7 is also applicable. Disclosure of peace officer personnel records at a public disciplinary hearing violates this section.

Further support for this position is found in the analysis prepared for the California State Assembly on Public Safety, California Bill Analysis, A.B.2559 Assem., 5/03/2000. The bill clarified existing law regarding disclosure of records of citizen complaints against police officers and amends Penal Code section 832.7. The bill provided that confidential peace officer personnel records of citizen complaints shall not be disclosed “*by the department or agency which employs the officer*” in any criminal or civil proceeding except by discovery procedures specified in existing law. The bill returned Penal Code section 832.7 to the language prior to January 1, 2001, thus leaving that confidentiality provision as it previously read since it was first enacted in 1978.

According to the comments of the author:

Existing law strikes a balance between the rights of persons seeking discovery of citizen complaints against peace officers and the right to privacy of the individual officer. Generally, before a police or sheriff’s department can disclose this information, a judge reviews the records in private and decides what is, and what is not, relevant in a criminal or civil case. If the court decides to release the records of citizen complaints, it issues an order to the agency. The court has the authority to issue a protective order as well, making sure that the information is used only for a legitimate, legal purpose that is relevant to the case in court.

It has come to my attention that some departments are going against the plain meaning of the law and informally releasing these confidential records.

AB 2559 merely clarifies existing law by stating that before an employing agency may release the records, there must be a valid order. AB 2559 sends a clear message that agencies should rely on judgment of judges and follow well-established procedures.<sup>1</sup>

The intent of the Legislature was to set forth an independent clear statement that peace officer personnel records are confidential in *any* context. Evidence Code sections 1043 and 1045 are intended to set forth the procedures in which peace officer confidential files may be disclosed in civil and criminal proceedings upon a finding by a judicial officer. These discovery procedures provide a limited exception to the disclosure of records. The general rule and intended public policy notion is that peace officer records are confidential to the greatest extent in preserving the privacy and constitutional rights of the officer.

**B. THE LEGISLATURE PROVIDED SUBSTANTIAL PUBLIC POLICY AND PRIVACY PROTECTIONS IN EVIDENCE CODE SECTIONS 1043 AND 1045 BY REQUIRING THAT A JUDICIAL OFFICER DETERMINE DISCLOSURE OF PEACE OFFICER PERSONNEL RECORDS**

The statutes governing the discovery of peace officer personnel files are found in California Evidence Code sections 915, 1043 and 1045.

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<sup>1</sup> The legislative history is the subject of a separately filed Request for Judicial Notice.

*Brown v. Valverde* (2010) 183 Cal.App.4th 1531 (*Brown*), is the only published case since the inception of the *Pitchess* discovery statutes in 1978, addressing whether a peace officer's confidential personnel records may be disclosed in an administrative proceeding on the ruling of a hearing officer, whether an arbitrator, Civil Service Commission, Administrative Law Judge, panel or some other variety of hearing review board.

Mr. Brown had been cited for driving under the influence by the California Highway Patrol (CHP) and he appealed the suspension of his license to the State Department of Motor Vehicles Department (DMV), requiring an administrative per se hearing. He filed a *Pitchess* motion in the administrative per se hearing, seeking the records of the arresting officer to, in essence, impeach his testimony. The CHP opposed the motion on the grounds that "only a court of law, and not an administrative tribunal, has the legal authority to entertain a *Pitchess* motion."

The administrative hearing officer denied the motion and Mr. Brown filed a writ with the Superior Court which then directed the hearing officer to grant the motion. An appeal ensued and the appellate court reversed on the grounds that the DMV hearing officer lacked judicial authority to rule and the statutory scheme of the *Pitchess* discovery statutes limits review to a judicial officer.

The *Brown* court interprets California Evidence Code sections 915, 1043 and 1045 as requiring the review and disclosure of privileged confidential peace officer records solely by a judicial officer. The court indicated the statute does not contemplate review by anyone other than a judicial officer and thereby excludes administrative law judges (ALJs), hearing officers, arbitrators, Civil Service Commissions, boards or panels from determining whether peace officer personnel information shall be disclosed.

Notwithstanding, *Brown*, the court did note that for State departments and agency administrative proceedings, (ALJs) may rule on motions of privilege pursuant to California Government Code section 11507.7. (*Brown, supra*, 183 Cal.App.4th at p.10.)

As discussed by the *Brown* Court California Evidence Code section 914 is clear:

Section 914 recognizes a distinction between the authority of presiding officers and that of the courts in ruling on claims of privilege. It provides that a “presiding officer shall determine a claim of privilege” (California Evidence Code § 914 (a)), but “[n]o person may be held in contempt for failure to disclose information claimed to be privileged unless he has failed to disclose such information.” (California Evidence Code §914(b). As to this provision, the Law Revision Commission Committee observed: “*Subdivision (b)* is need to protect persons claiming privileges in nonjudicial proceedings. (*Brown, supra*, 183 Cal.App. 4<sup>th</sup> at pg. 7.)

The Legislature recognized that only a judicial officer has the authority to hold a party in contempt for failing to produce confidential peace officer personnel files-- not hearing officers, arbitrators, or commission members, whether lawyers or non-lawyers. While the Legislature may have vested in "presiding officers" the initial authority to rule on a claim of privilege (such as an officer claiming a privilege to a right to privacy of their confidential personnel records), the hearing officer is without the authority to compel the production of the personnel records for his or her review or disclosure. That function is exclusive to a judicial officer.

**C. THERE ARE SIGNIFICANT NEGATIVE POLICY IMPLICATIONS IF A FINAL RULING ON A *PITCHESS* MOTION WERE EXTENDED TO ADMINISTRATIVE PROCEEDINGS RATHER THAN LIMITING ADMINISTRATIVE REVIEW TO RELEVANCY**

The *Brown* decision was heavily relied upon in the present case by the trial court. The *Brown* court noted that as to the phrase "administrative body," an analysis prepared for the Senate Committee on Judiciary contains the only reference to an administrative proceeding in Senate Bill No. 1436's (1977-1978 Reg.Sess.) legislative history. The analysis included a review of the retention requirements for citizen complaints and stated that the reference to "administrative body" in Evidence Code section 1043 may contemplate an administrative hearing held to evaluate a citizen complaint filed against a peace officer. But the *Brown* court stated this analysis does not compel the conclusion that the Legislature intended *Pitchess* discovery

to be available in all administrative proceedings. The *Brown* court found that California Vehicle Code section 14112 and California Government Code sections 1507.5 and 11507.6 provide the exclusive means for obtaining discovery in DMV administrative per se hearings. They do not contemplate-or countenance-*Pitchess* discovery. (*Brown, supra*, 183 Cal.App. 4th at p. 6.)

The courts have set the standards for discovery in a *Pitchess* motion through interpretation of the statutes governing the discovery of peace officer personnel files. “A finding of ‘good cause’ under Evidence Code Section 1043(b) is only the *first* hurdle in the discovery process.” (*City of Richmond, supra* (1995) 32 Cal. App. 4<sup>th</sup> 275.)

Good cause for discovery exists when a defendant shows in a *Pitchess* motion both the “materiality thereof to the subject matter involved in the pending litigation and states upon reasonable belief that such governmental agency identified has such records or information from such records” (Evid. Code, § 1043, subd. (a); see also *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 84.)

Noticeably, there are some concepts of law that were written for the layperson to easily understand and apply. The California Supreme Court discussed what constitutes a “good cause showing of materiality” in *Warrick v. Superior Court of Los Angeles County* (2005) 35 Cal. 4th 1011. The *Warrick* court held the supporting affidavit “must propose a defense or



defenses to the pending charges.” (*Id.* at p. 1024.) To show the requested information is material, a defendant is required to “establish not only a logical link between the defense proposed and the pending charge, but also to articulate how the discovery being sought would support such a defense or how it would impeach the officer’s version of events.” (*Id.* at p. 1021.)

In *Warrick*, the Supreme Court set forth clear guidelines for a showing of good cause to warrant the court’s in-chambers review of documents or information in the officer’s personnel file. The *Warrick* Court first held the counsel for defendant must allege in a declaration that the officer in question did something wrong, or as stated by the court: “Counsel’s affidavit must describe a factual scenario supporting the claimed officer misconduct.” (*Warrick, supra*, 35 Cal.4th at p. 1024.) Secondly, the *Warrick* Court held the alleged misconduct must be described with specificity; in other words, the supporting declaration must set out a “specific factual scenario” to support the Defendant’s claim of Officer misconduct. ... When the alleged misconduct is the writing of a false police report, a factual scenario may consist of a denial of the facts asserted in the police report.” (*Id.*, at pp. 1019, 1024-1025.)

The third criterion of good cause set by the Supreme Court in *Warrick* widened the standard, concluding that a “plausible scenario of officer misconduct is one that might or could have occurred.” (*Warrick, supra*, at 1026.) As stated by the court:

To determine whether the defendant has established good cause for in-chambers review of an officer's personnel records, the trial court looks to whether the defendant has established the materiality of the requested information to the pending litigation. The court does that through the following inquiry: Has the defense shown a logical connection between the charges and the proposed defense? Is the defense request for *Pitchess* discovery factually specific and tailored to support its claim of officer misconduct? Will the requested *Pitchess* discovery support the proposed defense, or is it likely to lead to information that would support the proposed defense? Under what theory would the requested information be admissible at trial? If defense counsel's affidavit in support of the *Pitchess* motion adequately responds to these questions, and states 'upon reasonable belief that the governmental agency identified has the records or information from the records' (§ 1043 (B)(3)), then the defendant has shown good cause for discovery. . . (*Warrick, supra*, 35 Cal.4th pp. 1026-1027.)

In addition, the discovery sought must support a theory of defense that is logically related to pending charges. "[A] showing of good cause requires a defendant seeking *Pitchess* discovery to establish not only a logical link between the defense proposed and the pending charge, but also to articulate how the discovery being sought would support such a defense or how it would impeach the officer's version of events." (*Ibid.*)

Once good cause for discovery has been established, Evidence Code section 1045 provides that the court shall then examine the information "in chambers" [and determine whether it should be released]. (*City of Santa Cruz, supra*, 49 Cal.3d at p. 83.)

While the relatively low threshold for discovery embodied in Evidence Code section 1043 requires a showing of good cause for discovery (materiality/access to information), these simple requirements are offset by Evidence Code section 1045's significant "protective provisions." Those provisions "(1) explicitly 'exclude from disclosure' certain enumerated categories of information; (2) establish a procedure for *in camera* inspection by the court prior to any disclosure; and (3) issue a forceful directive to the courts to consider the privacy interest of the officers whose records are sought and to take whatever steps 'justice' requires to protect the officers from 'unnecessary annoyance, embarrassment or oppression'" (Evid. Code, § 1045, subds (b)-(e); see also *City of Santa Cruz, supra*, 49 Cal.3d at pp. 83-84.)

The Legislature intended to protect the information contained within a peace officer's personnel file with the clear statutory language set forth in the 1978 *Pitchess* discovery statutes. This has been a long held public policy position of the Legislature, enforced by the courts for many decades. It is not in the best interests of the public, whom these officers protect, to put the officer's safety or personnel information at risk on the determination of anything other than relevancy of the *Pitchess* motion by a lay-person hearing officer. In determining the meaning or application of a statute, a court's task is to determine the intent of the Legislature.

*(Coalition of Concerned Communities, Inc. v. City of Los Angeles (2004))*

34 Cal.4th 733, 737.) The Legislature could have specifically included language in the statute that provides for determination for disclosure of *Pitchess* motion discovery by a hearing officer in administrative proceedings, but it did not. This is not by accident. The Legislature was mindful of the task and legal analysis that judges must perform in determining whether such file information should be disclosed.

**D. *PITCHESS* MOTIONS DISCLOSURE DETERMINED IN ADMINISTRATIVE PROCEEDINGS BY LAY PERSONS WILL HAVE FAR REACHING IMPACT ON COUNTIES AND CITIES**

There are 58 counties and 482 cities in the State of California, all of which have various administrative agencies. They can be civil service commissions which are composed of lay appointees by an agency's governing body.<sup>2 3 4 5 6 7</sup> They can be some sort of local appeals board, also

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<sup>2</sup> **Civil Service Commission; the County of Ventura** (5 member lay person) A Resolution of the Board of Supervisors Which Describes the Personnel Rules and Regulations For Employee of the County of Ventura Article 21, Section 2103 and Article 23, Section 2304(B), website: [http://portal.countyofventura.org/portal/page/portal/HumanResources/personnelRulesRegulations/PRR\\_2006\\_0.pdf](http://portal.countyofventura.org/portal/page/portal/HumanResources/personnelRulesRegulations/PRR_2006_0.pdf); the **County of San Luis Obispo** Rules 4.06 and 4.07 and the **County of San Luis Obispo** (5 member lay person) Guidelines VI (A) and (B), website: <http://www.slocounty.ca.gov/Assets/PE/CSC/CSC+Rules/RULES%20ORDINANCES%20ENABLING%20LEG%20PROCEDURAL%20GUIDELINES.pdf>; the **County of San Joaquin** (lay persons) Civil Service Rules and Regulations Rule 18, Sections 4, 6, 7 and 8, website: <http://www.sjgov.org/hr/dynamic.aspx?id=8367>; and the **County of El Dorado** (lay persons) Civil Service Procedures Rules of Procedure, 3.01 (B-F) & (K), website: [http://www.edcgov.us/Government/HumanResources/Civil\\_Service\\_Commission.aspx](http://www.edcgov.us/Government/HumanResources/Civil_Service_Commission.aspx).

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<sup>3</sup> **Civil Service Commission / Grievance Arbitration Hearing; Solano County** (5 member lay person) Civil Service Rules County of Solano Department of Human Resources Section IX - Discipline, Separation, and Appeals 9 04 (b) - Website:  
<http://www.solanocounty.com/civicax/filebank/blobdload.aspx?blobid=7932>, the Solano County Memorandum of Understanding's Imposed Terms & Conditions of Employment of 7/29/10 - Unit #13 Correctional Officers, Section 19, Step 4 and Step 5 (D)(F), website:  
<http://www.solanocounty.com/civicax/filebank/blobdload.aspx?blobid=9464>; Law Enforcement Employees Unit 3 Deputy Sheriff's Association, Section 15 (C)(1-5), website:  
<http://www.solanocounty.com/civicax/filebank/blobdload.aspx?blobid=9464>; Law Enforcement Supervisors Unit 4 Deputy Sheriff's Association, Section 15 (C)(E), website:  
<http://www.solanocounty.com/civicax/filebank/blobdload.aspx?blobid=10033>.

<sup>4</sup> **Civil Service Commission / Administrative Law Judge; Madera County** (lay persons)  
Madera County Code of Ordinances Title 2 - Administration and Personnel, Chapter 2.57.130, Rule 10-4, website: <http://www.maderacounty.com/countycode/index.html>

<sup>5</sup> **Civil Service Commission / Grievance; San Mateo** (5 lay person)  
County of San Mateo Civil Service Commission Rules, Rule XIV, Section 3, website:  
<http://www.co.sanmateo.ca.us/Attachments/HR/Files/Employee%20&%20Labor%20Relations%20Files/Civil%20Service%20Rules.pdf>;  
Memorandum of understanding County of San Mateo and Probation and Detention Association, Section 30, website:  
[http://www.co.sanmateo.ca.us/Attachments/HR/Files/Employee%20&%20Labor%20Relations%20Files/20110412\\_A\\_MOU%20with%20PDA.pdf](http://www.co.sanmateo.ca.us/Attachments/HR/Files/Employee%20&%20Labor%20Relations%20Files/20110412_A_MOU%20with%20PDA.pdf);  
Memorandum of Understanding County of San Mateo and Deputy Sheriff's Association, Section 33, 34.2(c)(d), website:  
[http://www.co.sanmateo.ca.us/Attachments/HR/Files/Employee%20&%20Labor%20Relations%20Files/20110412\\_A\\_MOU%20with%20DSA.pdf](http://www.co.sanmateo.ca.us/Attachments/HR/Files/Employee%20&%20Labor%20Relations%20Files/20110412_A_MOU%20with%20DSA.pdf);  
Memorandum of Understanding County of San Mateo and Law Enforcement Unit (Non-Safety Classification), Section 35, 35.2(c)(d), website:  
[http://www.co.sanmateo.ca.us/Attachments/HR/Files/Employee%20&%20Labor%20Relations%20Files/20110628\\_ELRA\\_LEUMOU%202010-2014.pdf](http://www.co.sanmateo.ca.us/Attachments/HR/Files/Employee%20&%20Labor%20Relations%20Files/20110628_ELRA_LEUMOU%202010-2014.pdf).

composed of lay people.<sup>8 9 10 11</sup> They can be a lay officer.<sup>12</sup> They can be arbitrators.<sup>13</sup> The use of (ALJs) in such hearings for local agencies is in fact rare.<sup>14 15 16</sup>

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<sup>6</sup> **Civil Service Commission / Hearing Officer; Sonoma County** (5 lay person) Sonoma County Rules of Civil Service Commission, Section 11.5, website: [http://hr.sonoma-county.org/documents/civil\\_service\\_rules.pdf](http://hr.sonoma-county.org/documents/civil_service_rules.pdf).

<sup>7</sup> **Civil Service Commission / Employee Relations Commission; County of Los Angeles** (lay persons and hearing officers) Civil Service Commission Procedural Rules, Rule 5, Section 5.01 and 5.10, website: [http://civilservice.lacountycommissions.info/cms1\\_012309.asp#TopOfPage](http://civilservice.lacountycommissions.info/cms1_012309.asp#TopOfPage)

<sup>8</sup> **Board of Supervisors/ Arbitrators/Retired Judges; Colusa County** Code, Chapter 45 Colusa County Personnel Practices Sections, 45.6.6, 45.6.7.5 - 45.7.7.10, website:

<http://www.codepublishing.com/ca/colusacounty/>.

<sup>9</sup> **Board of Employees Appeals; Shasta County** Personnel Rules, Chapter 8, Section 8.1, A-D, website:

[http://www.co.shasta.ca.us/support\\_services/docs/personnel\\_manual.sflb.as](http://www.co.shasta.ca.us/support_services/docs/personnel_manual.sflb.as)  
hx; Shasta Memorandum of Understanding's County of Shasta and the Shasta County Deputy Sheriff's Association Memorandum of Understanding, Article 15, B, 2(4) and (5), website:

[http://www.co.shasta.ca.us/Support\\_Services/docs/dsa1-mou.sflb.ashx](http://www.co.shasta.ca.us/Support_Services/docs/dsa1-mou.sflb.ashx)  
County of Shasta Correctional Officers Memorandum of Understanding, Article 15, 15.5 C and , website:

[http://www.co.shasta.ca.us/Support\\_Services/docs/dsa2-mou.sflb.ashx](http://www.co.shasta.ca.us/Support_Services/docs/dsa2-mou.sflb.ashx);  
Memorandum of Understanding between the County of Shasta and the Shasta County Sheriff's Administrative Association, Article XIII, E; the **Imperial County** Code of Ordinances, Chapter 3.64 Section 3.64.080, website:

<http://library.municode.com/index.aspx?clientId=16410&stateId=5&stateName=California>.

<sup>10</sup> **Personnel Appeals Board; Mono County** Code of Ordinances, Chapter 2.68 Personnel System, Sections 2.68.300, 2.68.302 and 2.68.303, website: <http://library.municode.com/index.aspx?clientId=16496&stateId=5&stateName=California>.

<sup>11</sup> **Merit Board (ALJ's) / Grievance Process; Contra Costa County** Personnel Management Regulations Part 2, 201 and 209, website: <http://www.co.contra-costa.ca.us/DocumentView.aspx?DID=1398>;  
Memorandum of Understanding between Contra Costa and Deputy Sheriff's Association Rank and File Unit, Section 24, 24.3 A-N, website: <http://ca-contracostacounty.civicplus.com/DocumentView.aspx?DID=1407>;

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Memorandum of Understanding between Contra Costa County and Deputy Sheriff's Association Management Unit, Section 19, 19.1 and 19.4, website: <http://ca-contracostacounty.civicplus.com/DocumentView.aspx?DID=1406>.

<sup>12</sup> **Hearing Officer; County of Merced** Human Resources Rules and Regulations Resolution No. 2007-22, Section 9, A(2) and B, website: [http://www.co.merced.ca.us/documents/Human\\_Resources/HR\\_RULES\\_AND\\_REGS\\_2007\\_22\\_Updated\\_12-8-2009%20\(2\).DOC](http://www.co.merced.ca.us/documents/Human_Resources/HR_RULES_AND_REGS_2007_22_Updated_12-8-2009%20(2).DOC);

the **County of Plumas** Resolution Ratifying the Memorandum of Understanding With the Sheriff's Association for the Sheriff's Department Unit and Sheriff's Mid Management Unit, Article 4.02 and Article 5.01 - 5.05, website:

<http://www.countyofplumas.com/DocumentView.aspx?DID=1676>.

<sup>13</sup> **Arbitrator; Amador County**; Memorandum of understanding Amador County Deputy Sheriff's Association, section 19.18, website:

<http://www.co.amador.ca.us/Modules/ShowDocument.aspx?documentid=4759>; Memorandum of understanding Sheriff's Office Mid-Management Unit for Safety Personnel, 19.18, website:

<http://www.co.amador.ca.us/Modules/ShowDocument.aspx?documentid=4753>; the **Sacramento County** Agreement between County of Sacramento and The Law Enforcement Management Association Article 14, 14.8 and 14.9, website:

[http://www.laborrelations.saccounty.net/coswcms/groups/public/@wcm/@pub/@olr/@inter/documents/webcontent/sac\\_028500.pdf](http://www.laborrelations.saccounty.net/coswcms/groups/public/@wcm/@pub/@olr/@inter/documents/webcontent/sac_028500.pdf);

Agreement Between County of Sacramento and Sacramento County Alliance of Law enforcement Covering All Employees in the Law Enforcement Support Unit and Supervisory Law Enforcement Support Unit, Article 16, 16.8 - 16.10, website:

[http://www.laborrelations.saccounty.net/coswcms/groups/public/@wcm/@pub/@olr/@inter/documents/webcontent/sac\\_028515.pdf](http://www.laborrelations.saccounty.net/coswcms/groups/public/@wcm/@pub/@olr/@inter/documents/webcontent/sac_028515.pdf);

Agreement Between County of Sacramento and Sacramento Deputy Sheriff's Association Covering all Employees In the Non-Supervisory Law Enforcement Unit, Section 18, 18.8 and 18.9, website:

[http://www.laborrelations.saccounty.net/coswcms/groups/public/@wcm/@pub/@olr/@inter/documents/webcontent/sac\\_026903.pdf](http://www.laborrelations.saccounty.net/coswcms/groups/public/@wcm/@pub/@olr/@inter/documents/webcontent/sac_026903.pdf);

County of Sacramento and Sacramento County Alliance of Law Enforcement Covering all Employees in the Peace Officers Unit, Section 17, 17.8 - 17.10, website:

[http://www.laborrelations.saccounty.net/coswcms/groups/public/@wcm/@pub/@olr/@inter/documents/webcontent/sac\\_028490.pdf](http://www.laborrelations.saccounty.net/coswcms/groups/public/@wcm/@pub/@olr/@inter/documents/webcontent/sac_028490.pdf).

<sup>14</sup> **Administrative Law Judge; County of Alameda** Civil Service Commission Civil Service Rules, Rule 2116, 2118 and 2119, website:

<http://www.acgov.org/hrs/documents/CivilServiceCommissionRules.pdf>.

Peace officers are also entitled to additional protections and confidentiality in employment related matters. The decision to release their records by laypersons flies in the face of statutes enacted to protect those rights.

The Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 et seq.) (hereinafter “Act”), “provides a catalogue of basic rights and protections which must be afforded all peace officers by the public entities which employ them.” (*Binkley v. City of Long Beach* (1993)16 Cal.App.4th 1795, 1805; *White v. County of Sacramento* (1982) 31 Cal.3d 676, 679; *Runyan v. Ellis* (1995) 40 Cal.App.4th 961, 964.)

Among other things, the Act assures a public safety officer the right to an administrative appeal when any punitive action is taken against the officer. (Gov. Code, § 3304, subd. (b); *Burden v. Snowden* (1992) 2 Cal.4th 556, 561.) Section 3304, subdivision (b) provides: “No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.” (Gov. Code, § 3304, subd. (b).) A punitive action has been defined as “any action which may lead to

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<sup>15</sup> **Administrative Law Judge / Appeals Board; Personnel Rules County of Kings**, Chapter 1, Rules 1010-1060, website: <http://www.acgov.org/hrs/csc/index.htm>.

<sup>16</sup> **Administrative Law Judge; Personnel Rules County of Tulare**, Rule 12 Employee Conduct and Discipline, website: <http://www.tularewib.org/documents/00GrulareCountyPersonnelRules.pdf>



dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.” (Gov. Code, § 3303; *Ruryan v. Ellis* (1995) 40 Cal.App.4th 961.) The Act’s “rights and protections” are afforded to peace officers in order to assure the “maintenance of stable employer-employee relations,” and thus to secure “effective law enforcement ... services” for “all people of the state.” (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 682-83; Gov. Code, § 3301).

It is evident that the more widely available the opportunity to appeal a decision resulting in disadvantage, harm, loss or hardship to an officer, the more “meaningful [the] hedge against erroneous action.” (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 682-83; Gov. Code § 3301.)

A number of actions may lead to an administrative hearing for a public safety officer. The number of public safety officers covered under the Act almost guarantees that the number of hearings held each year will be immense.

Government Code section 3301 states: For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

Public safety officers include, but are not limited to:

- Sheriff, undersheriff or deputy sheriff...of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, any police officer, employed in that capacity.
  - Police officers of the San Diego Unified Port District Harbor Police.
  - Port warden or port police officer of the Harbor Department of the City of Los Angeles.
  - Any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer (830.1(a)).
  - The Attorney General and special agents and investigators of the Department of Justice are peace officers (830.1(b)).
  - Any member of the California Highway Patrol including those members designated under subdivision (a) of Section 2250.1 of the Vehicle Code (830.2(a)).
  - A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code (830.2(b)).

- A member of the California State University Police Departments appointed pursuant to Section 89560 of the Education Code (830.2(c)).
- Any member of the Office of Correctional Safety of the Department of Corrections and Rehabilitation, provided that the primary duties of the peace officer shall be the investigation or apprehension of inmates, wards, parolees, parole violators, or escapees from state institutions, the transportation of those persons, the investigation of any violation of criminal law discovered while performing the usual and authorized duties of employment, and the coordination of those activities with other criminal justice agencies (830.2)(d)(1).
- Any member of the Office of Internal Affairs of the Department of Corrections and Rehabilitation, provided that the primary duties shall be criminal investigations of Department of Corrections and Rehabilitation personnel and the coordination of those activities with other criminal justice agencies. (830.2)(d)(2).

- Employees of the Department of Fish and Game designated by the director, provided that the primary duty of those peace officers shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code. (830.2)(e).
- Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code (830.2)(f).
- The Director of Forestry and Fire Protection and employees or classes of employees of the Department of Forestry and Fire Protection designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code. (830.2)(g).
- Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and

Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of any of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code. (830.2)(h).

- Marshals and police appointed by the Board of Directors of the California Exposition and State Fair pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officers shall be the enforcement of the law as prescribed in that section. (830.2)(i).
- Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code. 830.3(a).
- Any person regularly employed as an airport law enforcement officer by a city, county, or district

operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, operating the airport, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, and administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency. (830.33(d))

This list of persons that fall under the category of “peace officer” per Government Code section 3301 is very expansive. Moreover, there are a number of other employment classifications, not listed above, that are covered by the rights and protections of the Act.

### CONCLUSION

The ruling by the Fourth Appellate District, Division Two, that an administrative hearing officer may rule on a *Pitchess* motion will create flood gates for administrative mandamus under judicial review because administrative hearing officers are not necessarily qualified to make a final ruling on disclosure,-- which requires interpreting applicable law. CSAC and the League respectfully urge this court to reverse the decision of the

court below giving authority to an administrative hearing office to rule on a *Pitchess* motion. As shown throughout this brief the Legislature did not intend for an administrative hearing officer to rule on *Pitchess* motion discovery. Rather the statutory scheme shows that hearing officer's involvement must be limited to determining the relevancy of a *Pitchess* motion. We respectfully urge the Court to continue to apply the statutory language of *Pitchess* discovery statutes as intended by the Legislature.

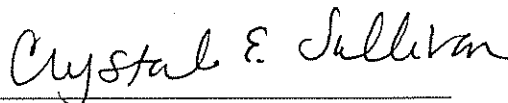
Respectfully submitted,  
KATHLEEN BALES-LANGE  
County Counsel

By: Crystal E Sullivan  
Crystal E. Sullivan  
Chief Deputy County Counsel

**CERTIFICATE OF COMPLIANCE  
PURSUANT TO CALIFORNIA RULES OF COURT, RULE 8.204  
FOR CASE NUMBER E052729**

Counsel of Record hereby certifies that pursuant to Rule 8.204(b)(1) (4) the Amicus Curiae Brief is reproduced on recycled paper of at least 20-pound weight and at least 13 point Roman type, and line space no smaller than 1.5. Counsel of Record also certifies that pursuant to Rule 8.204(c)(1) the enclosed Amicus Curiae Brief contains approximately 5,997 words, including footnotes. Counsel relies on the word count of the computer program used to prepare this brief.

Respectfully submitted,  
KATHLEEN BALES-LANGE  
Tulare County Counsel



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CRYSTAL E. SULLIVAN  
Chief Deputy County Counsel



PROOF OF SERVICE

STATE OF CALIFORNIA )  
 ) ss.

COUNTY OF TULARE )

I am employed in the County of Tulare, State of California. I am over the age of eighteen (18) years and not a party to this action; and, my business address is 2900 West Burrel Avenue, Visalia, CA 93291.

On June 6, 2013, I served the following documents: **Application For Amicus Curiae Brief and Amicus Curiae Brief in Support of Respondent and Motion For Judicial Notice** on the parties to this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Court of Appeal of the State of California  
Fourth Appellate District, Division Two  
3389 Twelfth Street  
Riverside, California 92501  
(4 Copies)

Supreme Court of California  
350 McAllister Street  
San Francisco, California 94102-4797  
(Original+13 Copies)(**Overnight mail**)

Superior Court of the County of Riverside  
Attn: Honorable Mac R. Fisher, Dept. 6  
Riverside Historic Courthouse  
4050 Main Street  
Riverside, California 92501

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[X ] **(BY MAIL)** I am “readily familiar” with The County of Tulare’s practice of collection and processing correspondence by mailing. Under that practice, mail is deposited with the U.S. Postal Service on the same day with postage fully prepaid at Visalia, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

- (BY TELECOPIER)** With the addressee(s)' consent and agreement, I caused such document to be delivered by telecopy transmission to the addressee(s).
- (BY PERSONAL DELIVERY)** I caused such envelope to be delivered by hand to the addressee(s).
- (BY FEDERAL EXPRESS OR UPS NEXT DAY SERVICE)** I caused such envelope to be delivered to Federal Express or UPS with a fully prepaid airbill/invoice for next business day delivery to the addressee(s).

Executed on June 6, 2013, at Visalia, CA.

  
Kari A. Martin-Higgins