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November 21, 2012

Hon. Tani Cantil-Sakuye, Chief Justice
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: *Riverside County Sheriff's Department v. Stiglitz*
Supreme Court Case No.: S206350
Court of Appeal Case Nos: E052729 and E052807
LETTER IN SUPPORT OF PETITION FOR REVIEW

Dear Honorable Chief Justice Cantil-Sakuye and Associate Justices:

On behalf of the California State Association of Counties ("CSAC") and the League of California Cities ("League"), and pursuant to rule 8.500(g) of the California Rules of Court, we respectfully request the Court grant review of the opinion of the Fourth District Court of Appeal, Division Two, in the above-referenced case ("Opinion").

Interest of Requesters

CSAC is a non-profit corporation whose membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and 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 is an association of 467 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 have statewide or nationwide significance. The Committee has identified this case as having such significance.

Reasons for the Court to Grant Review: An Overview

CSAC and the League request that this Court grant review of the Opinion that holds that a hearing officer, in an administrative appeal of the dismissal of a correctional officer who was a nonprobationary employee, has the authority to grant a *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal. 3d 531) during an administrative hearing.

We support the County of Riverside and Riverside Sheriff's Department Petition for Review and do not restate those reasons herein. We fully disagree with the Opinion's analysis that the statutory language in Evidence Code section 1043 and 1045 is ambiguous. Rather, the statutory language evidences the Legislature's clear intent to protect the information contained within personnel files. This has been a long-held public policy position of the Legislature, enforced by the courts for decades. It is not in the best interests of the public, whom these officers protect, to put their safety or the personnel information of police officers at risk for the benefit of another officer or citizen.

Brown v. Valverde (2010) 183 Cal. App. 4th 1531 addresses whether a peace officer's confidential personnel records may be disclosed in an administrative proceeding on the ruling of a hearing officer, an arbitrator, a Civil Service Commission, an Administrative Law Judge, a panel or some other variety of hearing review board. The court in *Brown* concluded that the administrative hearing officer lacked judicial authority to rule and the statutory scheme of the *Pitchess* discovery laws limits review to a judicial officer. In the present case, we contend there is no alternative method of obtaining peace officer personnel records other than a motion under Evidence Code section 1043.

California Evidence Code section 914 recognizes a distinction between the authority of "presiding officers" and that of the courts in ruling on claims of privilege. Furthermore, determinations on motions of privilege are for a judge, not lay person, hearing officers, arbitrators, Commissions, or panels. The Legislature has likewise recognized that only a judicial officer has the authority, and not lay hearing officers, arbitrators, Commission members -- whether lawyers or non-lawyers -- to hold a party in contempt for failing to produce confidential peace officer personnel files. While the Legislature may have vested the initial authority to rule on a claim of "privilege" in "presiding officers" (Evid. Code, § 914, subd. (a)), the hearing officer has no authority to compel the production of the personnel records for his or her review or disclosure. That function is *exclusive to a judicial officer*. An arbitrator is not a judicial officer and, thus, as a 'presiding officer' simply cannot require the disclosure of privileged information in order to rule on the Department's claim of privilege. There is no question that *Pitchess* materials are privileged, confidential peace officer personnel information. An arbitrator or hearing officer is not a judicial officer and lacks the jurisdiction and authority to rule on any *Pitchess* motion.

Accordingly, to interpret *Pitchess* in this way would vest authority in individuals without judicial experience, or an understanding of the analysis required in the detailed discovery process, to make a legally sufficient ruling. The Legislature did not intend for lay people to rule on the law. It would be detrimental to peace officers' privacy rights as well as expose public entities to liability for an invasion of privacy and other statutory protections, such as the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, §§ 3300 et seq.).

This case presents an issue of great importance to the many local public agencies in California because the Opinion, in essence, overturns the discovery process that has developed and agencies have relied upon for nearly three decades. Despite the Opinion's tactful discussion of Evidence Code sections 1043 and 1045 and Government Code section 3304(b), the ruling results in a conflict that creates an imperative for this Court to accept review to resolve.

The Opinion imperils each local public agency's ability to protect information contained within personnel files in accord with the clear statutory language set forth in *Pitchess*. It adds an additional layer of costs, not only to the uninvolved officers seeking to block disclosure of personnel information, but also to over 500 law enforcement employers in the delay of the disciplinary hearing proceedings, and to the judiciary that will preside over the number of increased writ proceedings challenging the resulting lay hearing officers' rulings on disclosure of privileged information.

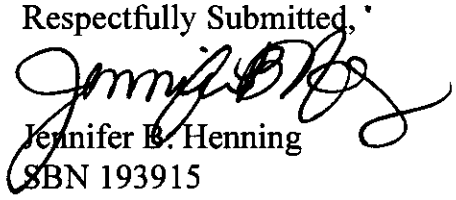
It is undisputed that there is a mechanism for an officer to invoke the jurisdiction of the court to intervene in a *Pitchess* motion. Equitable relief is available from the courts. It begs the question, why can't a *Pitchess* motion be heard in court in advance of a disciplinary hearing proceeding? The accused officer asserting a disparate treatment defense has ample time prior to the hearing to file a *Pitchess* motion with the court and obtain a judicial officer's ruling as to whether good cause and relevancy exists to require disclosure of confidential peace officer information.

Conclusion

CSAC and the League urge this Court to grant the petition for review in this case. The Opinion misconstrues the proper application of the very specific *Pitchess* discovery process expressly regulated as set forth by statute and upheld in case law. There is no need to upset the very specific, long-established discovery process that should take precedence over an undefined process that future administrative hearing officers, boards, panels, and the like must attempt to interpret and apply. The Opinion establishes a new procedure permitting lay people to make determinations regarding sensitive privilege

issues regarding peace officer personnel information. This new process is at odds with the *Pitchess* statutory scheme. The ruling interjects needless confusion, delay, and cost into local public agency administration of employee disciplinary appeals proceedings. The petition for review should be granted to correct this error.

Respectfully Submitted,



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Proof of Service Attached

Proof of Service by Mail

Riverside County Sheriff's Department v. Stiglitz

Case No. S206350

I, Mary Penney, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **LETTER IN SUPPORT OF PETITION FOR REVIEW** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Party	Attorney
Riverside County Sheriff's Dept: Plaintiff and Respondent	Bruce D. Praet Ferguson, Praet & Sherman 1631 East 18th Street Santa Ana, CA 92705
Stiglitz, Jan: Defendant	California Western School of Law 355 Cedar Street San Diego, CA 92101
Riverside Sheriff's Association: Intervener and Appellant	Dennis J. Hayes Hayes & Cunningham 5925 Kearny Villa Rd, Suite 201 San Diego, CA 92123
Drinkwater, Kristy: Real Party in Interest and Appellant	Michael P. Stone Stone Busailah, LLP 200 East Del Mar Blvd., Suite 350 Pasadena, CA 91105
Court of Appeal	Clerk of the Court Fourth Appellate District, Div. Two 3389 Twelfth Street Riverside, CA 92501
Trial Court	Clerk of the Court Riverside County Superior Court 4050 Main Street Riverside, CA 92501

and by placing the envelopes for collection and mailing following our ordinary business practice for collecting and processing correspondence for mailing. On the same day that correspondence

is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 21, 2012 at Sacramento, California.

MARY PENNEY