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SUPREME COURT
FILED

May 1, 2014

MAY - 5 2014

Frank A. McGuire
Supreme Court Clerk/Administrator
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Frank A. McGuire Clerk

Deputy

Re: Riverside County Sheriff's Department v. Jan Stiglitz (Riverside Sheriffs' Association, Intervener and Appellant); No. S206350

Responsive Letter Brief

Dear Mr. McGuire:

On April 16, 2014, this Court directed the parties to serve and file supplemental letter briefs addressing the following questions:

(1) Assuming that a motion for discovery of officer personnel records may be filed in an administrative proceeding (Evid. Code, § 1043, subd. (a)), and a hearing officer has authority to determine that the motion states good cause for discovery (Evid. Code, § 1043, subd. (b)(3)), is there any existing statutory mechanism that would allow the matter to be transferred to the superior court for an in camera review of the records by a judicial officer (Evid. Code, § 1045, subd. (b))?

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(2) If no existing statutory mechanism applies, do we have the authority to create such a transfer mechanism?

Real Party in Interest, Kristy Drinkwater, and Intervener, Riverside Sheriffs' Association, filed an initial letter brief on or before Tuesday, April 29, 2014, as directed. That letter brief answered the questions asked and confirmed this Court does have the inherent power to create such a transfer mechanism.

The Court further directed the parties to file responsive letter briefs on or before Monday, May 5, 2014.

Petitioner, Riverside County Sheriff's Department, in its initial letter brief, does not appear to have directly answered either question. Instead, petitioner has listed a litany of horrors that it suggests could occur if this Court were to use its inherent power to create such a transfer mechanism. These would include "subjecting [superior courts] to a flood of unregulated *Pitchess* motions from non-judicial hearing officers [that] would unduly burden the courts" Such "appeal to the extreme" arguments should not be persuasive when contrasted with an individual's constitutional due process right to present a meaningful defense.

Since petitioner appears to be suggesting that this Court does **not** have the authority to create such a transfer mechanism (although its 'official' answer to the question was "probably not"), it is appropriate to remind this Court that in its Reply Brief, the petitioner suggested "an administrative hearing officer could even make a preliminary determination of good cause in each case. If good cause was found, the matter would simply be referred to the court for an in camera review of the sensitive privileged information consistent with the existing provisions of Evidence Code §§ 1045 and 915". In its Answer to the Amicus Briefs, the petitioner stated, "the better and most logical way to reconcile the otherwise apparent ambiguity in the statutory scheme is to permit a peace officer in a POBR administrative hearing to file a *Pitchess* motion with the administrative body as seemingly contemplated by the language of section 1043(a). The non-judicial hearing officer could then make a preliminary determination of 'good cause' within the context of the facts of the particular case.

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If the non-judicial hearing officer found ‘good cause’, the matter would then be submitted to ‘the court’ for the exclusively judicial process established under section 1045.”¹

While the petitioner has ‘shape shifted’ throughout the entire appellate process, its focus and aim has always been to deny Real Party in Interest, Kristy Drinkwater, the means to obtain the information needed to present her disparate punishment defense.

Conclusion

It is fitting, that forty years ago, in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, this Court, "in the absence of legislation", (*Hill v. Superior Court* (1974) 10 Cal.3d 812, 816), used its inherent power and authority to judicially create a mechanism whereby a criminal defendant could discover officer personnel records as part of his constitutional due process right to have a “fair trial and an intelligent defense”. (11 Cal.3d at pp. 535-537.)

Today, should this Court determine a motion for discovery of officer personnel records may be filed in an administrative proceeding, a hearing officer has authority to determine that the motion states “good cause” for disclosure and, (if necessary), the matter must be transferred to the superior court for an in camera review of the records

¹If petitioner had conceded in the trial court that it was permissible for Real Party in Interest, Kristy Drinkwater, to bring her *Pitchess* motion as part of the administrative appeal process and the administrative hearing officer had the authority to determine that there was “good cause” to disclose the records, then the trial court could have conducted the required in camera review of the relevant documents and no subsequent appeals would have been necessary.

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by a judicial officer - this Court, now acting within the framework of guiding legislation, will once again use its inherent power and authority to allow Kristy Drinkwater, and all others similiary situated, to have a fair hearing by exercising her constitutional due process right to present a meaningful defense.

Cordially,

STONE BUSAILAH, LLP

MICHAEL P. STONE
ROBERT RABE



by ROBERT RABE

Attorneys for Real Party in Interest, Kristy Drinkwater, and
Intervener, Riverside Sheriffs' Association

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 years and not a party to the within action; my business address is 200 E. Del Mar Blvd., Suite 350,
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5 On May 2, 2014 I served the foregoing document described as RESPONSIVE LETTER
6 BRIEF on the following interested parties in this action

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/x/ VIA MAIL

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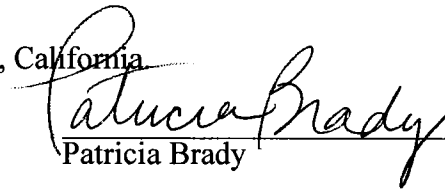
/X/ (State) I declare under penalty of perjury under that laws of the State of California that the foregoing is true and correct.

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Executed on May 2, 2014, at Pasadena, California

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Patricia Brady

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