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SUPREME COURT
FILED

Case No. S206350

NOV 29 2012

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Frank A. McGuire Clerk

RIVERSIDE COUNTY SHERIFF'S)
DEPARTMENT,)

Plaintiff and Respondent)

vs.)

JAN STIGLITZ,)

Defendant.)

RIVERSIDE SHERIFF'S)
ASSOCIATION,)

Intervenor/Appellant.)
_____)
AND RELATED ACTIONS.)
_____)

Case No.S206350)

**REPLY TO ANSWERS TO)
PETITION FOR REVIEW)**

) [Riverside Superior Court
) No. RIC10004998, after
) Published Decision of the
) Fourth District Court of
) Appeal, Div. Two, No.
) E052729]

Deputy

**RESPONDENT'S REPLY TO ANSWERS TO
PETITION FOR REVIEW**

After Published Opinion of the Fourth Appellate District, Division Two, in
the appeal from the Superior Court for the County of Riverside
Honorable Mac R. Fisher, Judge Presiding,

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Respondent, RIVERSIDE COUNTY SHERIFF'S DEPARTMENT
(hereafter "The Department") respectively replies to both Answers filed by
Appellant (hereafter "RSA") and Real Party in Interest (hereafter
"Drinkwater") in response to the Petition for review of the published
decision and opinion filed by the Fourth District Court of Appeal, Division
Two, on September 28, 2012, in *Riverside County Sheriff's Department v.
Jan Stiglitz, E052729*.

PREFATORY STATEMENT

In the interest of brevity, the Department will file a single Reply to
the two Answers filed in this case.

Ironically, Drinkwater's Answer uses more than twice the volume of
the original Petition to argue in the first instance that review should
somehow be denied, yet in the next breath proffers additional (new) issues
this Court should consider on review. While Drinkwater raises a number of
arguments on the merits of the underlying issues, there is little, if any,
authority provided in either answer as to why this Court should not grant
review beyond conclusory claims that the underlying opinion should remain
in favor of the non-petitioning parties.

Moreover, Drinkwater at least commendably concurs that the issue presented has statewide application (Answer, p. 15), while RSA blindly ignores the widespread implications of the issue presented. (Answer, p. 4) As more fully set forth in the Petition, even the Court of Appeal agreed that the Supreme Court should consider this matter and, as evidenced by the number of *Amicus* letters already filed in support of review, the issue presented in this case is of critical concern on a statewide level which begs clarification and guidance from this learned Court.

Without repeating the concise arguments contained in the Department's Petition, the Department will briefly address the few issues raised by the Answers filed by the parties.

NECESSITY FOR REVIEW

1. **The Published Opinion Of The Fourth District Court Of Appeal Remains in Direct Conflict With The Published Decision of the First Appellate District in *Brown v. Valverde* (2010) 183 Cal.App. 4th 1531.**

As the “prevailing parties” in the Court of Appeal, it is not surprising that both answering parties offer little more than a regurgitation of the underlying Slip Opinion as argument that the current case is somehow not in conflict with the First District's published decision in *Brown v. Valverde*

(2010) 183 Cal.App. 4th 1531. However, neither party proffers any further substantive support for the glaring fact that these two published opinions are in direct conflict with each other and demand review by this Court.

Notwithstanding the strained efforts of the Court of Appeal to try to reconcile the two decisions, a simple reading of both opinions reveals the glaring conflict between the two already pointed out in the Petition.

2. **The Statutory Scheme Encompassing the *Pitchess* Process Contains an Unresolved Ambiguity.**

Despite the best effort of RSA to suggest that there is no statutory ambiguity (RSA Answer, p. 4), even the Court of Appeal identified the inescapable ambiguity contained in the statutory scheme presented in this appeal (Slip Op., p. 28) and addressed in the Petition.

It is also interesting that Drinkwater makes the appropriate observation that POBR¹ “provides a catalogue of basic rights and protections which must be afforded all peace officers by the public entities which employ them.” (Drinkwater Answer, p. 8, citing *Moore v. City of Los Angeles* (2007) 156 Cal.App.4th 373, 380-81) As true as this concept might be, Drinkwater conveniently fails to point out that the *Pitchess*

¹ The Peace Officers’ Bill of Rights Act at *Government Code* § 3300, *et seq.*

process at issue on appeal is conspicuously missing from that catalog of rights provided by POBR.

Drinkwater also argues that the underlying decision somehow doesn't remove the procedural safeguards built into the *Pitchess* process. (Drinkwater Answer, p. 16). Yet, as pointed out in the Petition, there are no less than five (5) mandatory roles for “**the court**” to take in any *Pitchess* process which the Court of Appeal and the answering parties simply continue to ignore.

Finally, Drinkwater suggests that because the administrative hearing officer in the instant case happens to be an attorney, the risk of allowing all hearing officers to balance the statutory privilege and sensitive privacy interests presented in *Pitchess* motions is somehow moot. (Drinkwater Answer, pgs. 15 and 18). Two obvious problems with this narrow view - (1) it is undisputed that not all administrative hearing officers are attorneys on a statewide level, and (2) *Evidence Code* § 915 exclusively reserves such balancing to “**the court**” and “*the judge*” conducting *in camera* inspections.

3. The Issue Presented Continues to Have Widespread Statewide Application.

As noted above, Drinkwater at least acknowledges the statewide impact of the issue presented while RSA simply chooses to ignore the

obvious. The Department has already demonstrated the obvious statewide implication of this issue and this Court is well aware of its own historical consideration of *Pitchess* issues. Given the expressed interest of *Amici* and the acknowledgment of the Court of Appeal that Supreme Court review is needed to resolve this unique issue, the Department respectfully urges this Court to grant review.

4. **Conclusion.**

Given the minimal opposition to review and, for all of the reasons set forth above and in the Petition and *Amici* letters, the Department continues to respectfully urge the Court to consider this issue of statewide importance by granting this Petition for Review.

Dated: November 27, 2012

Respectfully submitted,

FERGUSON, PRAET & SHERMAN
A Professional Corporation

By:  _____

Bruce D. Praet, Attorneys for
Respondent, Riverside Sheriff's Dept.

CERTIFICATE OF WORD COUNT COMPLIANCE

1. This reply brief complies with the type volume limitation of California Rules of Court, Rule 8.204 in that this brief contains 899 words.

2. This brief complies with the typeface requirements of California Rules of Court, Rule 8.204 and type style requirements as this brief has been prepared in proportionally spaced typeface using Word Perfect X3, Times New Roman 13 point font.

Dated: November 27, 2012

Respectfully submitted,

FERGUSON, PRAET & SHERMAN
A Professional Corporation

By: _____



Bruce D. Praet, Attorneys for
Respondent, Riverside Sheriff's Dept.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Cathy Sherman, employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action. My business address is 1631 East 18th Street, Santa Ana, California 92705-7101.

On November 28, 2012, served the **RESPONDENT'S REPLY TO ANSWERS TO PETITION FOR REVIEW** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (By Mail) I placed such envelope with postage thereon fully paid to be placed in the United States mail at Santa Ana, California.

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

Executed on November 28, 2012, at Santa Ana, California.



Cathy Sherman

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