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GUEST COLUMN

Pitchess in play: Unlocking police files when the law won't

Even after California expanded public access to certain police misconduct records, *Pitchess* Motions remain indispensable for uncovering misconduct - like racial profiling or coerced testimony - that still lies beyond automatic disclosure.

By Czarmaine Majan

A *Pitchess* Motion is a procedural tool used in both criminal and civil cases to seek the discovery of specific information contained in confidential personnel files of peace officers. *Pitchess* is used typically in criminal cases in an effort to support the defense's case and/or to impeach an officer who may testify as a material witness.

Although California Penal Code Section 832.7 has opened specific categories of peace officer records to public disclosure, *Pitchess* Motions remain highly relevant. This is because many forms of officer misconduct still fall outside the statute's automatic disclosure requirements. For example, complaints alleging racial profiling, coerced testimony, false reporting or other misconduct involving moral turpitude continue to require the filing of a *Pitchess* Motion.

Under Penal Code Section 832.7, the following categories of records within peace officers' personnel files are not confidential:

- Discharge of a firearm by a peace officer
- Use of force by a peace officer
- Sustained findings of unreasonable or excessive force
- Sustained findings of failure to intervene against excessive force
- Sustained findings of sexual assault by a peace officer
- Sustained findings of dishonesty by a peace officer



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Upon request, law enforcement agencies must release all related investigative materials and disciplinary records pertaining to the incidents listed above – even if the peace officer resigns before the investigation is completed.

For all other types of alleged misconduct, the *Pitchess* procedure remains the pathway for discovery.

The *Pitchess* procedure

Pitchess Motions are governed by Evidence Code Sections 1043-1047.

• **Filing and service:** A party must file the motion in accordance with Evidence Code Section 1043. The law enforcement agency holding the records must be served at least 10 court days before the hearing and file a response at least five court days before the hearing.

• **The hearing:** On the scheduled hearing date, the counsel for the agency (usually city attorney) and the custodian of records will appear before the judge.

◦ If the motion is denied, the agency and custodian are excused. As a note, there is no limit as to how many times a party may file a *Pitchess* Motion.

◦ If granted, the court will conduct an in-camera review, typically held in chambers. All parties are excluded except for the judicial officer, custodian of records, the city attorney and a court reporter. In this hearing, the judge will review the officer's personnel file to determine if relevant records exist and whether they should be disclosed.

Note: Although the custodian of records has the discretion to exclude the city attorney from the in-camera hearing, this is uncommon. The city attorney's role at this stage is to assist the judge in identifying which records are responsive to the motion and to ensure that any disclosure is limited to information deemed relevant. Most importantly, the city attorney should ensure that a protective order is issued, limiting the use of any disclosed records to the current proceeding and prohibiting their dissemination for any other purpose or to outside parties.

• **Judicial ruling:** During the in-camera review, the judge is the final decision-maker, identifying which documents are relevant to the pending case. The hearing then reconvenes in open court to state on the record whether relevant documents exist and, if so, which types of records will be disclosed.

Common opposition to *Pitchess* motions

Evidence Code Section 1043(b) requires that a *Pitchess* Motion include:

1. Identification of the officer whose records are sought, the agency in custody and the hearing details.

2. A description of the types of records requested.

3. An affidavit showing good cause, including the materiality of the information to the pending case.

The affidavit's "good cause" requirement is often the weakest link in a *Pitchess* Motion because they do not identify a specific misconduct or present any plausible alternative scenario in contrast to the officer's account of the subject incident.

In *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, the California Supreme Court clarified that to establish good cause, the moving party must:

1. Establish a logical link between the proposed defense and the pending charge.

2. Explain how the requested information would support the defense or impeach the officer's version of events.

Although the good cause standard is relatively low or "relaxed," many motions fail to meet this threshold.

Practical Tip: Carefully review the affidavit to ensure it:

- Addresses a specific officer misconduct in the pending case;
- Offers a plausible alternative scenario that challenges the officer's account; and
- Explains how the officer's credibility is material to the case.

Pitchess in relation to brady material

Pitchess Motions are often triggered by a potential Brady issue in criminal cases. Under *Brady v. Maryland* (1963) 373 U.S. 83, prosecutors must disclose exculpatory information to the defense. The information, also known as Brady material, refers to favorable information or evidence that may be used by the defense, often for impeachment purposes.

Typically, the prosecutor's office notifies the defense that there may be potential Brady material in the peace officer's personnel file. This notification alerts the defense to the possibility that disciplinary actions or complaints may exist that may assist the defense's case. A *Pitchess* Motion is then filed to request access to peace officer personnel records.

The distinction between "material" under *Pitchess* and Brady is important:

- In *Pitchess*, "material" means relevant to the pending case.

- Under Brady, "material" means information that could affect the outcome of a trial.

Therefore, if information meets the Brady definition of 'materiality,' it generally satisfies the good cause requirement for a *Pitchess* Motion and may warrant an in-camera review of the confidential personnel records.

Pitchess and Brady work in tandem

Case law confirms that *Pitchess* and Brady procedures work together to balance two competing interests: a defendant's right to a fair trial and an officer's right to confidentiality in personnel records.

Therefore, a potential Brady notification alone is not sufficient to justify a *Pitchess* in-camera review. There must still be some explanation for how and why the officer's credibility is relevant to the pending case.

Therefore, it is important to note:

- *Pitchess* Motions can be filed without Brady notifications. Any party may move for discovery as long as the good cause standard is met under Evidence Code Section 1043(b).

- If there is a potential Brady issue, the affidavit showing good cause still needs to explain how the requested information or the officer's credibility is relevant to the case.

Final tips

- Ensure that statutory timelines are met and service is executed properly.

- Review the supporting affidavit or declaration and examine whether it presents a plausible alternative scenario that challenges the officer's report and body-worn camera footage, if any.

- Prepare the custodian of records ahead of the hearing so they can answer questions related to the personnel file and confidently assist the judicial officer during the in-camera review in locating relevant information.

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