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SPECIAL UPDATE

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THE CALIFORNIA SUPREME COURT HOLDS THAT AN ARBITRATOR MAY RULE ON A *PITCHESS* MOTION WHEN HEARING AN ADMINISTRATIVE APPEAL FROM DISCIPLINE IMPOSED ON A CORRECTIONAL OFFICER

Summary

The California Supreme Court held that an arbitrator may rule upon a discovery motion for officer personnel records, commonly referred to as a *Pitchess* motion, when hearing an administrative appeal from discipline imposed on a correctional officer. The Court found that Evidence Code section 1043 (1) expressly provides that *Pitchess* motions may be filed with an appropriate "administrative body;" and (2) uses language that reflects a legislative intent that administrative hearing officers be allowed to rule on these motions.

Background

The Riverside County Sheriff's Department ("Department") fired Deputy Kristy Drinkwater for falsifying her payroll forms. The MOU between the Sheriffs' Association and the County provided for an administrative appeal. At the hearing Drinkwater intended to urge a disparate treatment defense, alleging that others had committed similar misconduct but were not fired. Accordingly, she sought discovery of records from personnel investigations of any and all Department employees who have been disciplined for similar acts of misconduct. The Department objected, arguing that she could not satisfy the requirements for a *Pitchess* motion. The arbitrator (1) denied the motion, (2) ruled that the Department need not search its records for similar cases, and (3) stated that Drinkwater was obligated to identify the particular officers whose records she believed were relevant to her claim.

Drinkwater renewed her motion, which included a declaration that named 11 officers who had allegedly committed similar misconduct but received little or no discipline. The arbitrator then ordered production of the 11 officers' records for in camera review.

The Department sought a writ of administrative mandate in superior court to overturn the arbitrator's order, initially arguing that Drinkwater failed to establish good cause for discovery and that *Pitchess* discovery was only available for officers involved in the underlying incident at issue. The Department later filed a supplemental brief citing a recent case, *Brown v. Valverde*, which had held that a driver facing a license suspension for driving under the influence could not seek *Pitchess* discovery in an administrative hearing at the Department of Motor Vehicles ("DMV").

Trial Court

Relying upon *Brown,* the Department argued that only judicial officers could grant *Pitchess* motions and that the arbitrator did not have authority to rule on the motion. The superior court agreed and ordered the arbitrator to reverse his prior order. Drinkwater sought review of the trial court's decision.

Court of Appeal

In reversing the trial court's decision, the Court of Appeal distinguished *Brown* and criticized its reasoning. The Department sought review of the Appellate Court's decision, again arguing that only judicial officers are authorized to rule on *Pitchess* motions.

California Supreme Court

The California Supreme Court reviewed the applicable statutes and addressed the issue of whether *Pitchess* motions may only be ruled on in the superior court, or whether they can be resolved by an administrative hearing officer.

The Court addressed each argument made by the parties and by amici curiae. Following are a few of the Court's findings in support of their affirmation of the decision of the appellate court.

1. Evidence Code section 1043 allows a *Pitchess* motion to be filed with the appropriate court *or administrative body*. The Court reasoned that the Legislature would not have included "administrative body" if it only wanted *Pitchess* motions brought in superior court.

2. The Department argued that Evidence Code section 1045 refers to "the court" five different times, and that these five references must trump the single reference to "administrative body." The Supreme Court, however, addressed and dismissed this argument by pointing out that if the Legislature had intended that *Pitchess* motions only be conducted in superior court, it could have provided a mechanism to transfer a motion from an administrative proceeding to the superior courts, but it did not.

3. The Court addressed the Department's reliance on *Brown v. Valverde* by distinguishing it from the facts in this case. In *Brown*, the Court reasoned that allowing a *Pitchess* motion was not appropriate in a DMV hearing, because (a) it would frustrate the Legislature's intent to quickly remove unsafe drivers from the road; (b) the hearing addressed only whether the licensee drove with a blood-alcohol level above the legal limit; and (c) the credibility of the arresting officer was not at issue during the hearing. In Drinkwater, however, the Department admits that the discovery she seeks is relevant, and that it does not bear on the credibility of the officers whose records are sought. Thus, the holding in *Brown* is not applicable here, and *Pitchess* discovery by an arbitrator is appropriate in this case. In distinguishing *Brown*, the Court opined that its precedential value is limited to facts involving a driver's license suspension.

Finally, the court declared that allowing administrative hearing officers to determine *Pitchess* motions in this context furthers the goals of the POBRA and maintains the balance between an officer's interest in privacy and a litigant's interest in discovery.

Riverside County Sheriff's Department v. Stiglitz, (2014) ___ Cal.4th ___.
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