



Pitchess motions: The Police Department perspective

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Pitchess motion basics: Purpose

- Criminal defendants and others seeking personnel records of police officers must bring a motion to obtain access because courts consider the records **confidential**
- *Pitchess* motions intended to **balance a criminal defendant's need for evidence with officers' right to keep personnel files private**

Pitchess motion basics: Background law

- *Pitchess v. Superior Court* (1974) 11 Cal.3d 531
 - Evidence of prior complaints against officer is relevant to establish character trait of officer
 - Need to balance defendant's need for citizen complaints against need to protect secrecy of official information

Pitchess motion basics: Background law

- Penal Code § 832.5, subd. (b)
 - Requires police departments to keep complaints about police officers for five years
- Penal Code § 832.7, subd. (a)
 - Personnel records may be obtained only through Evidence Code § 1043 procedure

Pitchess motion basics: Background law

- Evidence Code § 1043 – *Pitchess* motion procedure
 - Requires affidavits showing **good cause** and **materiality**
 - Generally considered a low standard
 - Affidavits must show “**specific factual scenario**” and “**plausible factual foundation**” for why records are material to defense
 - Attorney may file affidavit in support of motion, may be on information and belief
 - In other words, hearsay is okay
 - **No “fishing expeditions”** — requires specificity in allegations of misconduct
- Evidence Code § 1045
 - Requires in camera review of potentially relevant documents before production to requesting party
 - Limits responsive records to those five years before event

Pitchess motion basics: Cases

- Many!
 - *Pitchess* issues are frequently litigated on appeal and often discussed in published criminal law decisions

PD's defense of *Pitchess* motions

- General policy: **Protect confidentiality of police officer personnel records (ethically) at all costs**

PD's defense of *Pitchess* motions

- Common pitfalls

- Improper notice under Code Civ. Proc., § 1005 (Evid. Code, § 1043, subd. (a))
 - Code Civ. Proc., § 1005 requires service of motion **16 court days before hearing**, plus additional days for service
 - Note that a Court **cannot hear** a motion served with insufficient notice; this is a **jurisdictional defect**
 - PD may also argue **practical necessity of timely notice**: a PD's records department has to process the motion and deliver it to the City Attorney; City Attorney must then analyze, draft, and file opposition; all this cannot be done in a short amount of time

PD's defense of *Pitchess* motions

- Common pitfalls
 - Motion must articulate a **“plausible” alternate scenario**
 - Must rebut officer's version of events with plausible alternative
 - Example: Officer claims defendant resisted arrest, which warranted physical contact by officer during arrest; successful *Pitchess* criminal defendant seeking other complaints of excessive force against arresting officer might respond by claiming he did not resist arrest and instead suffered injuries from police officer's use of excessive force during arrest
 - Motion may seek only certain records
 - Disclosure usually limited to **names and addresses of prior complainants**, not the substance of their complaints
 - Records older than 5 years are **not disclosable** (nor are police departments required to maintain such records)
 - **Prohibits disclosure of conclusions of investigations** of complaints against officer(s)

PD's defense of *Pitchess* motions

- Common pitfalls

- Motion must **articulate a defense theory** of the case, and identify **how the records sought will aid that theory**
 - Will misconduct, even if proven, be ultimately irrelevant to defense theory of case? If so, criminal defendant will not receive those records
 - Example: *Pitchess* criminal defendant may not obtain complaints of officer's false statements if he claims only excessive force; complaints of false statements irrelevant to excessive force claim
 - See *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021

PD's defense of *Pitchess* motions

- Common themes of *Pitchess* motion oppositions
 - Motion filed untimely
 - No plausible factual foundation or alternate sequence of events for officer misconduct
 - No logical link between alleged misconduct and defense
 - Categories of records sought too broad/not relevant to defense
 - Defendant not entitled to certain documents requested (officers' medical records, officers' notes from interviews, etc.)
 - Defendant not entitled to documents from all officers identified

PD's defense of *Pitchess* motions

- How to prepare for hearing
 - *Pitchess* hearings recorded by court reporter
 - Judge may or may not announce tentative, may or may not give you time to argue
 - **Don't expect much time to argue**; motions are generally won or lost on the papers
 - Moving party may offer oral reply to arguments offered by PD's counsel; PD's counsel may then have an opportunity to respond
 - Judge may deny without prejudice and give criminal defendant another opportunity to file motion (especially if motion was untimely)

PD's defense of *Pitchess* motions

- At the hearing (Part 1: Good Cause)
 - Remember: hearing is just the first part of a two-part procedure
 - Judge's decision based solely on **whether good cause for disclosure shown**
 - If judge finds good cause, **will review documents in chambers** and may order disclosure
 - Judge should clarify on the record what will be produced following in camera review (from whose file, relevant to show which type of misconduct, from what time period, etc.); and issue protective order barring dissemination of records from personnel file

PD's defense of *Pitchess* motions

- In camera (Part 2: Which Information to Disclose)
 - Only people in the room should be:
 - (1) judge
 - (2) court reporter
 - (3) PD's attorney
 - (4) PD custodian of records
 - (5) officer
 - **NOT allowed:** DA and defense counsel
 - Judge will review documents on record, order those that are responsive to be served on moving party

Other *Pitchess* issues

- “*Brady*”

- Refers to *Brady v. Maryland* (1963) 373 U.S. 83, requiring disclosure by the prosecution of information that would be material to the fairness of the trial
- Operates in tandem with *Pitchess*, but has narrower materiality standard — “material to the fairness of the trial” — so **if defendant does not meet *Pitchess* standard for disclosure, he does not meet *Brady*'s**

Questions?

