GENERAL ORDER

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EFFECTIVE: 1 August 2007

REVISED: 1 December 2008
1 January 2010
20 June 2011

SUBJECT: Pitchess Motions

ISSUED BY: Fernando Solorzano

I. PURPOSE

The purpose of this General Order is to establish procedures for the legal and appropriate handling of Pitchess Motions as defined in Government Code sections 1043-1047. This order applies only to the handling of Pitchess Motions. It does not apply to the procedure to be followed pursuant to University policy on the handling of other types of subpoenas. This General Order shall also establish procedures for the handling of subpoenas when lawfully delivered by the court or an officer of the court.

Definition:

A Pitchess Motion is a request made by a defendant in a criminal action for access to information in the personnel file of an arresting police officer. Though rare, Pitchess Motions can also be made in civil actions.

II. POLICY:

The policy of the CSU Long Beach Police Department shall be to accept lawfully prepared Pitchess Motions submitted by defense counsel to the court. The function of the CSU Office of General Counsel in response to Pitchess Motions is provided within its procedural outline (attached).

III. PROCEDURE:

(a) When a server of a Pitchess Motion arrives to the University Police Department, the on-duty communications operator shall immediately notify the following Department personnel in order of availability:
   (1) The Chief of Police
   (2) The Administrative Services Division Commander
   (3) The Field Services Division Commander
   (4) The On-Duty Watch Commander

(b) When any one of the above individuals have been contacted, they will meet with the subpoena server and review the subpoena for the following mandatory criteria:
   (1) The Pitchess Motion service must be at least 16 court days in advance of the hearing date.

a. If the Pitchess Motion is received by mail, the receipt must be 21 days in advance of the hearing date.

b. If the Pitchess Motion is received by fax, the receipt must be 18 days in advance of the hearing date.
   1. **NOTE: Fax delivery of a Pitchess Motion can only be made with the University's prior approval.**

(c) If any Department employee other than the Chief or a Division Commander receive the Pitchess Motion (i.e, the on-duty Watch Commander), that person will immediately contact the first available Command Officer to notify them of the receipt of the Pitchess Motion.

(d) The appropriate Command Officer will complete the following functions as soon as he/she receives the Pitchess Motion:
   (1) The Command Officer shall forward a copy of the Pitchess Motion to the CSU Office of General Counsel.
   (2) The Command Officer shall send to the Department employee(s) a letter informing them of the receipt of a Pitchess Motion. This letter shall contain the following information:
      a. The case name and number of the represented Defendant;
      b. The specific materials being sought by Defense Counsel;
      c. The alleged cause for discovery of materials as provided under Pitchess;
      d. The hearing date, time and location;
      e. And the notice that the employee is entitled to separate legal representation at his/her own expense.
      f. A Department representative and contact information should the employee have additional questions.

(e) The Chief of Police, or his/her designee, shall assign a Division Commander as the custodian of records and to appear before the court on the assigned date of the hearing. The assigned custodian of records shall assemble all relevant files and bring them to the court on the date of the assigned hearing for the court to review in camera.

(f) CSU Office of General Counsel shall be responsible for the following actions:
   (1) The Office of General Counsel shall review the motion, and confer with the Chief of Police and/or either Division Commander.
      a. The General Counsel will prepare and submit a reply brief in preparation for the hearing.
      b. If the motion appears to be—in the opinion of the General Counsel—absent of cause, an opposition brief will be filed.
   (2) The Office of General Counsel has assumed the position of not participating during a Pitchess Motion. General Counsel will, however, remain available for consultation throughout the service and appearance process.
   (3) The CSU Office of General Counsel may be reached at (562) 951-4500.

(4) The CSU Office of General Counsel report on Pitchess Motions can be found at www.calstate.edu/gc/Docs/Pitchess_Motions.doc. This document is included as "**Attachment A".**

APPROVED

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PITCHESS MOTIONS

Office of General Counsel

Revised March 2007

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THE PITCHESS MOTION HEARING PRACTICE

I. Definition and Overview

A Pitchess motion is a request made by a defendant in a criminal action for access to information in the personnel file of an arresting police officer. Pitchess motions can also be made in civil actions, but they are rare. The applicable procedure in a civil case is the same as what is described here. The name "Pitchess" comes from a 1974 California Supreme Court case, *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. The Pitchess process is now codified in California Evidence Code sections 1043-47.

The theory underlying a Pitchess motion is that a defendant should be entitled to any information that is relevant to his/her defense. If the arresting officer's personnel file contains information that might bear on the defendant's claim that the officer had engaged in misconduct, as a matter of fairness, the defendant should have access to that information.

Both the legislature and the courts, however, have recognized that the police officer whose records are sought has an equally compelling interest in maintaining the privacy of his/her personnel file. The Pitchess hearing process described below is designed to ensure an appropriate balance of those two competing interests.

II. The Records Subject to a Pitchess Motion

The term "personnel file" for purposes of a Pitchess motion includes all records maintained by the employer on the arresting officer, including records of internal affairs investigations, citizen complaints, records in the Human Resources department, and records containing psychological or other medical information concerning the arresting officer.

This is the broad field of potential records that may be implicated. Necessarily, in each individual case, this broad scope is narrowed in accord with the particular charges made. Records in a personnel file evidencing use of excessive force, for example, would not be relevant to a criminal case where the police misconduct alleged was submission of a false report. The scope of appropriate and potentially relevant records in each individual case should be discussed in advance, if it is not obvious, so that the right records are taken to court with the police officer.

III. The Pitchess Motion

The defendant must serve a Pitchess motion on the custodian of the records sought. Typically the custodian is the University Police Chief or his/her designee. Motion papers must include a notice of hearing which specifies which records are sought, a memorandum of legal arguments in support of disclosure in that particular case, a declaration under oath, usually by the defendant's attorney, which specifies the defenses raised and the factual justification for disclosure, and a proposed order for the judge to

sign. If excessive force is charged in connection with the arrest that gives rise to the Pitchess motion, a copy of the police report must be attached.

If hand delivered, the motion must be served at least 16 court days before the hearing date. Service by mail requires five additional calendar days. Service by facsimile or overnight mail requires two additional calendar days. However, a motion may only be served by facsimile with the University's pre-approval. A copy of the Pitchess motion should be provided promptly to the campus' University Counsel. If a written opposition is made it must be filed with the court and served on the opposing attorney nine court days prior to the hearing. Counsel for the Pitchess applicant may then elect to file a reply brief with the court and serve a copy on the University five court days before the hearing. Service of an opposition memorandum must be accomplished in a manner that ensures the other side will receive it within 24 hours of filing, (e.g. via personal service, overnight mail, or facsimile by agreement.) Opposing counsel must follow this same rule when serving any reply brief. (Code Civ. Proc. § 1005.)

Upon receiving a Pitchess motion, the agency is required to immediately notify the officer affected, who is entitled to separate representation, at his/her own expense, at the hearing if s/he so chooses. A sample letter advising an officer of a Pitchess motion requesting information from his/her file is attached.

IV. Opposing a Pitchess Motion

The hearing process is in two steps. First, the criminal defendant making the request for police officer records has the burden to demonstrate "good cause." The court needs to evaluate whether the defendant has set forth specific facts that support the particular records requested. The legal standard for the good cause determination is relatively low. The criminal defendant making the request need only show that the scenario of alleged officer misconduct could or might have occurred. If this is lacking, the university will challenge the lack of good cause, and the judge will rule on the university's objection. The purpose for this first step in the process is to determine the type of records that are subject to disclosure.

The second step requires the judge to conduct a separate review of actual records from the police officer's personnel file that fall into the categories identified in the first step, and to determine whether they are relevant to the underlying case and compliant with various statutory limitations. For example, Evidence Code section 1045 prohibits the disclosure of information that is more than five years old, contains the conclusions of any officer investigating a complaint, and facts that are so remote as to make disclosure of little or no practical benefit. The court's review is done in chambers with the university's representatives present, and is called an in camera review.

Defendants sometimes seek records under the broad umbrella of "dishonesty." If there should be some evidence of dishonest behavior in the arresting officer's file, the judge is required to look at the circumstances in which the dishonest behavior occurred and to determine whether they are close enough to the factual circumstances presented in the defendant's particular case before determining whether to release any information

from the file. Courts have ruled that a police officer's credibility is not automatically at issue in every case. There are some other general descriptors used to justify the release of records, such as "improper tactics" or "aggressive behavior." The court is required to engage in the same careful analysis of relevance to the particular charge involved before records can be produced. The relevance of any records of complaint against an arresting officer is determined by the nature of the complaints made, not by whether those complaints were sustained.

Pitchess motions have been ruled to be constitutional. The range of objections that can be raised to these motions is therefore limited. The Office of General Counsel will file a response in those instances in which it is determined that the good cause threshold is satisfied, that advises the court of the standards to be used in the in camera review. It also provides advance notice that an attorney will not be present at the hearing, but that a university police officer will attend with all potentially relevant records. In cases where the motion does not satisfy the good cause showing, the Office of General Counsel will file an Opposition Memorandum, and may or may not attend the hearing, depending on the severity of the particular circumstances. A university police officer will also be required to attend the hearing in this situation with all potentially relevant records.

V. The Hearing

On the day set for the hearing, all records included in the officer's personnel file that fall within the types of records sought in the motion must be brought to the court. Documents in the officer's personnel file which are not requested in the motion should not be brought to court. A university police officer must be in attendance in the capacity of custodian of the records. The judge may conduct an in camera review, if appropriate, and then order that some or all of the records requested in the motion be produced to the attorney for the criminal defendant. It is more common for the court to require no records to be produced, and rather to supply names and addresses of witnesses from the personnel file to the moving party. A court reporter should always be requested for any in camera review so that a record of the process is made.

In those cases in which the custodian of the records does not bring the entire personnel file for the courts in camera review, the custodian must inform the court on the record what documents or categories of documents in the complete personnel file were not brought to court. Additionally, if it is not readily apparent from the nature of the withheld documents that they are nonresponsive or irrelevant to the discovery request, the custodian must explain for the record his or her decision to withhold them. (People v. Guevara (2007) _____Cal.Rptr.3d_____, 2007 WL 602495.

The judge should restrict the use of any information released to that case only, by means of a protective order. If such an order is not automatically entered, it should be requested at the time the judge announces the ruling. The custodian of the records should maintain a separate copy of all the documents that are disclosed.

In every Pitchess motion, the attorney assigned to the campus is available to discuss any issues raised by the proceeding.

APPENDIX:

SAMPLE LETTER TO POLICE OFFICER WHOSE RECORDS ARE REQUESTED

Police Officer
XXXXXXXXXXXXXXX
XXXXXXXXXX, CA.

Re: Pitchess Motion For Your Personnel Records

The CSU has been served with a motion under Evidence Code sections 1043-47 in People v. , Case No. . The motion requests [describe records requested] from your personnel file because defendant [Name] is arguing that [describe alleged police misconduct].

These records are subject to an in camera review by the court before any production will be permitted. The matter is set for hearing in the Superior Court for the County of _____ on _____, 200_ at m. The hearing process is described in the Pitchess Motions Manual prepared by the CSU Office of General Counsel, which is on the web at: http://www.calstate.edu/gc/Docs/Pitchess_Motions.doc

The CSU is evaluating the motion. A response or opposition will be filed by the university as described in the Pitchess Motion Manual. You are entitled to be represented at that hearing, at your own expense, if you so desire. In any case, a university police officer will attend the hearing with the appropriate records.

Further information about this matter is available from _____.

Sincerely,

XXXXXXXXXXXXXXX
Chief of Police