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**SUPREME COURT
FILED**

APR 24 2014

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April 21, 2014

Frank A. McGuire
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Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Riverside County Sheriff's Department v. Jan Stiglitz (Riverside Sheriffs' Association, Intervener and Appellant); No. S206350

Dear Mr. McGuire:

On April 16, 2014, this Court directed the parties to serve and file supplemental letter briefs addressing the following questions:

(1) Assuming that a motion for discovery of officer personnel records may be filed in an administrative proceeding (Evid. Code, § 1043, subd. (a)), and a hearing officer has authority to determine that the motion states good cause for discovery (Evid. Code, § 1043, subd. (b)(3)), is there any existing statutory mechanism that would allow the matter to be transferred to the superior court for an in camera review of the records by a judicial officer (Evid. Code, § 1045, subd. (b))?

(2) If no existing statutory mechanism applies, do we have the authority to create such a transfer mechanism?

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Real Party in Interest, Kristy Drinkwater, and Intervener, Riverside Sheriffs' Association,¹ do not know of any existing statutory mechanism that would specifically allow the matter to be transferred to the superior court for an in camera review of the records by a judicial officer.

This Court does, however, have the authority to create such a transfer mechanism.

This Court has the Inherent Power to Create a Procedural Mechanism

In addition to their inherent equitable power derived from the historic power of equity courts, all courts have inherent supervisory or administrative powers which enable them to carry out their duties, and which exist apart from any statutory authority. (*Bauguess v. Paine* (1978) 22 Cal.3d 626, 636-637; *Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 287-288.) "Courts have inherent power, as well as power under section 187 of the Code of Civil Procedure², to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute It is not only proper but at times may be necessary for a court to follow provisions of the Code of Civil Procedure which are harmonious with the objects and purposes of the proceeding although those provisions are not specifically made applicable by the statute which creates the proceeding." (*Tide Water Assoc. Oil Co. v. Superior Court* (1955) 43 Cal.2d 815, 825, fn. omitted, see also Code Civ. Proc., § 128, [Legislature has recognized the authority of courts to manage their proceedings and to adopt suitable methods of practice].) "[A]ll courts have inherent supervisory or administrative powers which enable them to carry out their duties, and which exist apart from any statutory

¹Wrongly spelled Riverside **Sheriff's** Association in the caption.

²Code of Civil Procedure section 187 provides: "When jurisdiction is, by the constitution or this code, or by any other statute, conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code."

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authority. [Citations.]" (*Asbestos Claims Facility v. Berry & Berry* (1990) 219 Cal. App. 3d 9, 19; disapproved on other grounds in *Kowis v. Howard* (1992) 3 Cal.4th 888, 896–897; accord, *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) These powers are derived from the state Constitution. (*People v. Castello* (1998) 65 Cal.App.4th 1242, 1247; Cal. Const., arts. III, § 3, and VI, § 1.)

"Courts are not powerless to formulate rules of procedure where justice demands it." (*Adamson v. Superior Court* (1980) 113 Cal.App.3d 505, 509, citing *Addison v. State of California* (1978) 21 Cal.3d 313, 318-319.) The inherent powers derived from article VI, section 1 of the California Constitution are not dependent on statute. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267; see *Millholen v. Riley* (1930) 211 Cal. 29, 33-34.) These powers entitle courts to " . . . adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council." [Citation.]" (*Citizens Utilities Co. v. Superior Court* (1963) 59 Cal.2d 805, 812-813.) Thus, a court has the inherent authority to create a new form of procedure in a particular case, where justice demands it. (*Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1376-1378.) " 'The . . . power arises from necessity where, in the absence of any previously established procedural rule, rights would be lost or the court would be unable to function.' [Citation.]" (*James H. v. Superior Court* (1978) 77 Cal.App.3d 169, 175-176 [juvenile court had inherent power to hold a competency hearing despite absence of express statutory authority]; see also *In re Amber S.* (1993) 15 Cal. App. 4th 1260.)

It is axiomatic that discovery provisions are to be liberally construed in favor of disclosure "unless clearly prohibited by statute or policy considerations." (*Browne v. Superior Court* (1979) 98 Cal.App.3d 610, 614; cf. *Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 172-173; *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 372.) If this Court were to create a transfer mechanism to allow the matter to be transferred from the administrative proceeding to the superior court for an in camera review of the records by a judicial officer, it would not be creating a new method of civil discovery beyond that authorized by statute, (see *Holm v. Superior Court* (1986) 187 Cal. App. 3d 1241, 1247), but using its inherent and other powers to create and adopt a form of procedure based on a reasonable

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interpretation of the relevant statutory provisions that is within the scope of disclosure already formulated by the legislation.

Conclusion

Forty years ago, in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, this Court, "in the absence of legislation" (*Hill v. Superior Court* (1974) 10 Cal.3d 812, 816), used its inherent power and authority to judicially create a mechanism whereby a defendant, who was asserting self-defense to a charge of battery on a police officer, could discover officer personnel records. (11 Cal.3d at pp. 535-537.)

Should this Court determine a motion for discovery of officer personnel records may be filed in an administrative proceeding, a hearing officer has authority to determine that the motion states good cause for discovery, and it is necessary for the matter to be transferred to the superior court for an in camera review of the records by a judicial officer - this Court, now acting within the framework of guiding legislation, may use its inherent power and authority to create a transfer mechanism from the administrative proceeding to the superior court.

Cordially,

STONE BUSAILAH, LLP

MICHAEL P. STONE
ROBERT RABE



by ROBERT RABE

Attorneys for Real Party in Interest, Kristy Drinkwater, and
Intervener, Riverside Sheriffs' Association

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 years and not a party to the within action; my business address is 200 E. Del Mar Blvd., Suite 350,
Pasadena, CA 91105

5 On April 23, 2014 I served the foregoing document described as LETTER BRIEF on the
6 following interested parties in this action

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8 350 McAllister Street
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(original and 8 copies via Federal Express)

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/x/ VIA MAIL

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I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

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As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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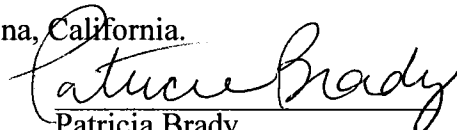
/X/ (State) I declare under penalty of perjury under that laws of the State of California that the foregoing is true and correct.

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Executed on April 23, 2014, at Pasadena, California.

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Patricia Brady

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