CLIENT NEWS BRIEF

Law Enforcement Agencies May Disclose Officer Information To Prosecutors

The California Supreme Court has decided the case of *Association for Los Angeles Deputy Sheriffs v. Superior Court*, concluding that the *Pitchess* statutes permit law enforcement agencies to disclose information to the prosecutor about an officer who is a witness in a prosecution case, where the officer has exonerating or impeaching material in their personnel file.

Background

In 1963, the U. S. Supreme Court, decided the case of *Brady v. Maryland* (1963) 373 U.S. 83, holding that the Fourteenth Amendment's right to due process creates an affirmative duty on the prosecution to disclose evidence, including evidence that is favorable to the defendant. In 1974, the California Supreme Court decided *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. The *Pitchess* case, and the adopted statutes that followed, establish the exclusive procedure for the discovery of an officer's personnel records or information contained therein. Because *Pitchess* renders certain officer personnel records confidential, and *Brady* creates a duty to disclose evidence which may impeach an officer's testimony, *Brady* and *Pitchess* can come into conflict where such impeachment evidence exists in the testifying officer's personnel file. To address this conflict, some law enforcement agencies maintain a list of officers who have potential exculpatory or impeachment information in their personnel files. These lists are known as *Brady* lists.

Supreme Court's Holding

In furtherance of the above cases, the Association for Los Angeles Deputy Sheriffs (Association) filed a petition for writ of mandate, seeking injunctive relief to prevent the Los Angeles County Sheriff's Department (Department) from disclosing the identity of deputies who appear on the Department's *Brady* list, without first requiring *Pitchess* compliance.

The trial court granted the Association's request in part, agreeing with the Association that *Brady* does not authorize the disclosure of a list where a request is unconnected to a criminal case. However, the trial court ruled that where an officer is involved in a pending prosecution as a potential witness, the Department may disclose the facts which would constitute a *Brady* issue. The California Supreme Court agreed.

The Supreme Court reviewed the *Brady* and *Pitchess* cases as well as the relevant California statutes. The Court came to two conclusions:

(1) If the Department has a *Brady* list, as in this case, the list is confidential to the extent it is derived from confidential records; and

(2) The Department does not violate an officer's privacy rights or statutory protections by sharing with prosecutors *Brady* information when the officer is a potential witness in a pending criminal prosecution.

Takeaways

A public agency may disclose potential *Brady* information about an officer,

Jenell Van Bindsbergen
Partner
Fresno Office
jvanbindsbergen@lozanosmith.com

Matthew M. Lear
Associate
Fresno Office
mlear@lozanosmith.com

LS Lozano Smith
ATTORNEYS AT LAW

even if that information is confidential, to the prosecutor for a criminal case where the officer is a potential witness in a pending criminal prosecution and such disclosure does not constitute a violation of the provisions of Penal Code 832.7. Even though this case encourages agencies to disclose *Brady* information to prosecutors to assist with the concept of a fair and equitable trial for a criminal defendant, this case does not create an affirmative duty on law enforcement agencies to either create a *Brady* list or alert prosecutors of such information.

If you have any questions about this case or confidentiality of police officer records in general, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcast, follow us on Facebook, Twitter, and LinkedIn or download our mobile app.