

## ***What is a Pitchess Motion ???***

***A Pitchess Motion is filed by a defense attorney to force the police to produce information about the police officers which will help the defendant and which is negative towards the police. Citizen complaints\*, on the job discipline and other information must be provided.***

***A California Pitchess motion is a request for information contained in an officer's personnel file. Criminal defense lawyers typically raise this motion when they believe that their client has been the victim of police misconduct.***

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. The name "Pitchess" comes from a 1974 [California Supreme Court case, \*Pitchess v. Superior Court\*, 11 Cal. 3d 531 \(Cal. 1974\)](#). 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. However both the legislature and the courts have recognized that the police officer whose records are sought has an equally compelling interest in maintaining the privacy of his/her personnel file. Therefore the Pitchess hearing process prescribed by law tries to ensure an appropriate balance of these two competing interests.

### **California Evidence Code Sections 1043 on Pitchess Process.**

If you are arrested...and, for example, you claim that the police

- violated your rights,
- used excessive force,
- engaged in racial profiling,
- coerced your confession,
- fabricated or "planted" evidence, and/or
- made false statements in the police report,

your California criminal defense attorney should probably file a Pitchess motion. When granted, it entitles the defense to obtain information about prior complaints (by other people) that the officer(s) engaged in the types of conduct described above.

If it turns out that the named officer has a history of complaints, this fact could be used to impeach the officer's credibility...and may help you win your case.

## 2. Procedural Requirements

California law requires that attorneys file their Pitchess motions in writing. Some of the requirements that must appear in the motion include (but are not limited to):

- a notice of motion (which includes, among other things, the name of the defendant, the name of the officer whose records are being requested, and a description of the records sought),
- a supporting affidavit or declaration,
- a copy of the police report (if the motion alleges excessive force), and
- proof that the motion has been served on the appropriate parties.

With respect to the second requirement...that there be a supporting affidavit or declaration...there are some very specific guidelines that the attorney must adhere to in order to have even a chance of prevailing on the motion.

### *Supporting facts*

California law prohibits granting Pitchess motions that are essentially masked as "fishing expeditions". In order to prevail on this type of motion, the attorney must establish "good cause". This means that the declaration or affidavit must state specific facts showing that the records sought are material to the "subject matter involved in the pending litigation".

"A showing of 'good cause' exists if the defendant demonstrates both

1. a specific 'factual scenario' that establishes a 'plausible factual foundation' for the allegations of officer misconduct, and
2. that the misconduct would (if credited) be material to the defense."

"Material" means that there is a logical link between the pending charge and the proposed defense, *and* that the requested information will support the proposed defense. You therefore satisfy this requirement by showing

1. a logical connection between the offense and the proposed defense,
2. the requested information (commonly referred to as "discovery") is factually specific and tailored to support the claim of officer misconduct,
3. the requested discovery supports the proposed defense or is likely to lead to information that will do so, and
4. the requested discovery would be potentially admissible during a California jury trial.

And as Ventura criminal defense attorney Darrell York explains, "Even given these strict requirements,

the threshold for this request is relatively low. Judges generally grant California Pitchess motions as long as the declaration or affidavit states a denial of the facts as they appear in the police report or states an alternative version of what "might" have occurred."

**Information for this post was gleaned from the following sites:**

<http://www.shouselaw.com/pitchess-motion.html#1>

<http://definitions.uslegal.com/p/pitchess-motion/>

<http://home.earthlink.net/~bdega/criminaldefenselawyerdanielhorowitz/id8.html>

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**[\* Note from Redwood Curtain CopWatch: The possibility of a cop's file being subject to a Pitchess Motion in the future is a primary reason for people to file complaints (carefully) when abused by police.** *Please remember to have someone with you filming with a video camera when you turn in a complaint. We are willing to go with you in that capacity. Make sure to get a stamped copy of your complaint from the cops (and also have a copy already before you bring them anything); also, focus on what the officer(s) did- not on your words or behavior. Don't talk with the cops when you turn it in except to say, "Here is a complaint" "I'd like a stamped copy, please." Call CopWatch for more about Complaints. Don't expect anything to come of them and don't meet with officers regarding your complaint without talking with an advocate first. Fill those officers' files with complaints when they abuse.]*