

# SAN FRANCISCO SUPERIOR COURT

## PITCHESS AND BRADY MOTION PROCEDURE

### Calendar

In the San Francisco Superior Court, *Pitchess* and *Brady* motions are heard on separate calendars. The *Pitchess* calendar begins on Wednesdays at 1:30 p.m. in Department 22. The *Brady* calendar begins on Wednesdays at 2:00 p.m. in Department 22.

### Motions

*Pitchess* and *Brady* motions must be noticed and briefed separately, even if the movant is filing both types of motions simultaneously. For *Brady* motions, a separate motion should be filed for each officer.

### Captions

Each motion must clearly delineate on the caption whether the motion is filed under *Pitchess* or *Brady*. For example, *Pitchess* motions should state “*Pitchess* / Evidence Code § 1043 Motion” and *Brady* motions should state “*Brady* / Evidence Code § 1043 Motion.”

### Content

The specific material being sought by a *Pitchess* or *Brady* motion must be identified as clearly as possible. For example, the motions should list the officer’s names as well as any relevant subject-matter categories, which may include, but are not limited to: bias; dishonesty; moral turpitude; or any other potential *Brady* categories. If any party has received a notice of potential *Brady* from SFPD, the motion should include that information as well. Please be sure to include date of incident in every motion.

### Time to File

All *Pitchess* and *Brady* motions under Evidence Code section 1043 *et seq.* must be filed with 16 court days’ notice, extended by five calendar days if served via U.S. Mail. (Code Civ. Proc. § 1005, subd. (b).) Commission Catherine Lyons, or if unavailable, the Presiding Judge of the Criminal Division of the San Francisco Superior Court (Department 22), may prescribe a shorter time for good cause shown by declaration.

### Filing

All *Pitchess* and *Brady* motions must be

brought to Department 22 so that the Court may assign a date for an initial hearing. All *Pitchess* and *Brady* motions are then to be filed in Room 101.

### Service and Courtesy Copies

#### Pitchess motions

*Pitchess* motions **must** be served upon opposing counsel and Ronnie Wagner of SFPD Legal. Please deliver a copy of your motion to Ms. Wagner at the SFPD Court Liaison’s Office, 850 Bryant Street, Room 511. A courtesy copy **must** also be delivered to the Honorable Catherine Lyons in Department 22 at the Hall of Justice at least three days before the scheduled hearing. Courtesy copies may be delivered to Commissioner Lyons via email at [clyons@sftc.org](mailto:clyons@sftc.org), so long as a copy of that email is also delivered to opposing counsel.

#### Brady motions

*Brady* motions **must** be served upon opposing counsel and Nina Sariaslani of SFPD IAD. Please email a PDF of your motion to Ms. Sariaslani at [nina.sariaslani@sfgov.org](mailto:nina.sariaslani@sfgov.org). A courtesy copy **must** also be delivered to the Honorable Catherine Lyons in Department 22 in the Hall of Justice. Courtesy copies may be delivered to Commissioner via email at [clyons@sftc.org](mailto:clyons@sftc.org), so long as a copy of that email is also delivered to opposing counsel.

### Sealing

Should any party seek to file any motion under seal, the party must comply with California Rule of Court, rule 2.551. Declarations lodged under seal should be delivered in person to a clerk in Department 22, attention Commissioner Lyons. Counsel should also make arrangements to serve Ronnie Wagner (*Pitchess*) or Nina Sariaslani (*Brady*) in a confidential manner.

### Record Production to the Court

All responsive records to a *Brady* motion will be produced on a CD with all pages BATES numbered. The custodian of records will provide a sworn declaration describing the search for and production of responsive records. Each declaration will state that the custodian is available to answer questions under oath regarding the

records produced and any other details necessary to address the concerns expressed in *People v. White* (2011) 191 Cal.App.4th 1333.

### In Camera Review by the Court

When records are produced for in camera review by the Court, the producing party in a *Pitchess* motion will indicate (e.g., by providing a list of page numbers) those records that the producing party contends should be excluded from release because they contain “conclusions” under Penal Code section 1045, subdivision (b)(2) and *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 55 [“The term ‘conclusions of any officer’ denotes the thought processes of, and factual inferences drawn by, an officer investigating a complaint, concerning such matters as the credibility of witnesses or the significance, strength, or lack of evidence.”]. These designations will not be binding on the Court.

For a *Brady* motion, however, the producing party need not request that “conclusions” be excluded from release. (*City of Los Angeles v. Superior Court (Brandon)* (2002) 29 Cal.4th 1, 15.)

### Default Timetable for Brady Motions

On the initial date scheduled for a *Brady* motion, the custodian of records will lodge any responsive records with the Court, provided that the appropriate showing to trigger an in camera review has been made. The Court will then review those records in camera. One week thereafter, the Court will return the records to the custodian and issue an order to disclose those records pursuant to a protective order, if appropriate. The custodian of records will then have one week to prepare the records designated for disclosure.

If an order shortening time to file the motion is granted, the time to: 1) lodge records with the Court; 2) return records by the Court; and 3) disclose records (as outlined above) will each be extended by one week.

No records will be disclosed unless the receiving party signs the protective order issued under Evidence Code section 1045. For a defense initiated *Brady* motion, the records will be available at Police Headquarters.