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TRAINING BULLETIN

ATTORNEY GENERAL ISSUES OPINION IN FAVOR OF DISCLOSING OFFICER PERSONNEL INFORMATION

By: Michael P. Stone, Esq. and Muna Busailah, Esq.

On October 13, 2015, California Attorney

General Kamala Harris issued Public Opinion No. 12-401 approving a Brady procedure previously proposed by the California District Attorneys Association. This Brady procedure known as an “External Brady Policy” requires the CHP (and other law enforcement agencies) to release the names of officers against whom findings of dishonesty, moral turpitude, or bias have been sustained and the earliest dates of such conduct.

Under the External Brady Policy previously proposed and now endorsed by the Attorney General, a qualified representative of the CHP would examine the files of CHP officers who have been the subject of complaints, arrests, or internal investigations for the purpose of identifying (1) officers against whom there have been sustained misconduct within the preceding five years that reflect moral turpitude, untruthfulness, or bias on the part of the officer; and (2) officers who have

been convicted of a moral turpitude offense, or who are on probation for any offense, or have criminal charges pending against them.

The CHP opposed this procedure and argued that it could not lawfully disclose such information to a district attorney. First, the CHP argued that it was not part of the “prosecution team” and therefore not subject to disclose such information about its officers. Second, the CHP argued that the proposed policy improperly delegated the prosecution’s Brady duty to the CHP. Finally, the CHP argued that disclosing the list would violate officers’ rights under POBRA.

The Attorney General rejected those arguments and opined that since CHP officers act on the government’s behalf, both the individual officers and the CHP itself are part of the prosecution team. Furthermore, Brady is imposed on the government as a whole which includes the

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prosecution and law enforcement agencies. Lastly, the Attorney General held that the External Brady Policy does not violate POBRA. While conceding that POBRA does contain some privacy protections, it does not preclude the possibility that Officers may be disclosed pursuant to Brady. According to the Attorney General, “[S]o long as CHP complies with POBRA’s procedural requirements, a policy that asks the CHP to perform an initial file review and disclose Brady list information does not violate POBRA.”

While the Attorney General’s opinion is only advisory and not binding, it is persuasive authority on the issue of requiring law enforcement agencies to disclose names of Officers who have been accused of or committed crimes of moral turpitude. Some District Attorneys in California have already adopted the External Brady Policy and others may likely follow.

This advisory opinion is important because it signals possible modification to Brady procedures whereby officers’ privacy rights may be eroded. While POBRA offers some protection, such as preventing an employer from taking punitive action against an officer for appearing on a Brady list, officers should be wary that prosecutors may be granted more permissive access to their personnel files in the future.

Michael P. Stone is the firm’s founding partner and principal shareholder. He has practiced almost exclusively in police law and litigation for 35 years, following 13 years as a police officer, supervisor and police attorney.

Muna Busailah is a partner in the firm since 1995 and has represented members in police law and litigation cases in administrative, state and federal venues.

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