



## CITY OF EUREKA City Attorney

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September 16, 2016

### VIA OVERNIGHT MAIL

Chief Justice Tani G. Cantil-Sakauye and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

**Re: Request for Depublication (Cal. Rules of Court, rule 8.1125(a))  
*City of Eureka v. Superior Court of Humboldt County*,  
Case No. A145701 (filed July 19, 2016);  
Trial Court No. JV140252**

To The Chief Justice and Associate Justices:

The City of Eureka (“the City”) requests depublication of *City of Eureka v. Superior Court of Humboldt County*, No. A145701, filed July 19, 2016 (“*City of Eureka*”). In *City of Eureka*, Division Five of the First Appellate District held that a video inside a juvenile court file was not protected by the *Pitchess* statutes when sought under Welfare and Institutions Code section 827. The court reasoned that the video was not *Pitchess* material because it was generated independent of and prior to any citizen complaint, internal investigation, officer appraisal or officer discipline. The City was the appellant in the case and seeks depublication for two reasons. First, the case may create uncertainty as to the interplay of Welfare and Institutions Code section 827 and the *Pitchess* protections guaranteed by Penal Code sections 832.5, 832.7, and 832.8. Second, the transcript of a hearing was lost, and an incomplete factual record undermines the appellate court’s ruling.

The case may confuse the bench and the bar by creating the appearance that Welfare and Institutions Code section 827 sidesteps the protections of *Pitchess*. The City is not aware of another published case discussing the interplay of Welfare and Institutions Code section 827 and *Pitchess*, meaning that this opinion may provide the sole guidance on their interaction for a judge or attorney. et the opinion does not discuss whether Welfare and Institutions Code section 827 allows access to *Pitchess* material, instead deeming it unnecessary to reach that issue to decide the case:

“We need not decide whether Welfare and Institutions Code section 827 would authorize disclosure of *Pitchess* material in a juvenile case file because we conclude the City has not demonstrated the arrest video is a “personnel record” under sections 832.7 and 832.8.”

*City of Eureka* 205 Cal.Rptr.3d 134, 140.

The opinion implicitly left this issue open for future litigation. This restraint may mislead the bench and the bar, spawning unnecessary litigation. Welfare and Institutions Code section 827(a)(3)(A) clearly states where disclosure of the juvenile record conflicts with other law regarding privileged or confidential information, such as the *Pitchess* statutes, the other law shall prevail:

“If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail.”

Welf. & Inst. Code, section 827(a)(3)(A).

Although the opinion suggests that whether Welfare and Institutions Code section 827 allows access to *Pitchess* records in a juvenile case file is an unresolved issue, the issue was clearly decided by the legislature. The *Pitchess* statutes, where they apply, overrule Welfare and Institutions Code section 827. *Id.* In sum, the opinion does not clarify the state of the law but does the opposite with regard to an issue on which it is the sole published case. Thus, the City believes depublication is appropriate to avoid obscuring the law.

Furthermore, the opinion was reached based upon an incomplete factual record, and the lack of a complete record undercuts its reasoning. Valerie Walker, a certified court reporter, never provided the January 29, 2015 hearing transcript to the Superior Court, and the case proceeded without this transcript. (See the attached notice and declaration.) Without a complete and proper transcript of the proceedings, an appellate court cannot properly conduct its oversight function. *See Douglas v. Fulda* (1880) 54 Cal. 588, 588 (appeal not considered when transcript on appeal is unintelligible); *Downs v. Downs* (1930) 209 Cal. 634, 635 [289 P. 620, 621] (consideration of the merits of the cause impossible without transcript). The opinion is based upon an obviously incomplete factual record. The City of Eureka believes depublication of the opinion is appropriate because of the hole in the factual record.

The City is aware that the California Supreme Court rarely utilizes its depublication power. Despite this, the City believes this case warrants depublication because it obscures rather than clarifies the law, and because the appellate court did not have a complete record on which to base its decision.

Respectfully submitted,

/s/ Cyndy Day-Wilson  
Cyndy Day-Wilson  
City Attorney, City of Eureka

Attached:  
Notice of Incomplete Reporter’s Transcript with Declaration  
Proof of Service

No. A145701  
(Humboldt County Super. Ct. No. JV140252)  
(The Honorable Christopher G. Wilson)

**IN THE COURT OF APPEAL OF THE  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE**

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CITY OF EUREKA,  
*Plaintiff and Appellant,*

v.

SUPERIOR COURT IN AND FOR THE  
COUNTY OF HUMBOLDT,  
*Defendant and Respondent.*

THADEUS GREENSON, *et. al.*  
*Real Party in Interest and Respondent.*

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**CITY OF EUREKA'S NOTICE OF INCOMPLETE  
REPORTER'S TRANSCRIPT ON APPEAL AND REQUEST TO  
VACATE BRIEFING SCHEDULE; DECLARATION OF CYNDY  
DAY-WILSON IN SUPPORT OF CITY'S NOTICE OF  
INCOMPLETE REPORTER'S TRANSCRIPT ON APPEAL AND  
REQUEST TO VACATE BRIEFING SCHEDULE**


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CYNDY DAY-WILSON, (No. 135045)  
City Attorney, City of Eureka  
531 K Street  
Eureka, California 95501  
Telephone: (707) 441-4147

Attorney for Plaintiff and Appellant  
City of Eureka

**NOTICE OF INCOMPLETE REPORTER'S TRANSCRIPT ON  
APPEAL AND REQUEST TO VACATE BRIEFING SCHEDULE**

The City of Eureka ("City") hereby requests the Court vacate the current briefing schedule set by the Court on August 10, 2015 due to the lack of a completed Reporter's Transcript on Appeal.

  
Cyndy Day-Wilson  
City Attorney, City of Eureka  
ATTORNEY FOR PLAINTIFF AND  
APPELLANT CITY OF EUREKA

**DECLARATION OF CYNDY DAY-WILSON IN SUPPORT OF**  
**CITY'S NOTICE OF INCOMPLETE REPORTER'S TRANSCRIPT**  
**ON APPEAL AND REQUEST TO VACATE BRIEFING**  
**SCHEDULE**

I, Cyndy Day-Wilson, declare as follows:

1. I am the City Attorney for the Plaintiff and Appellant City of Eureka ("City"). I have personal knowledge of the facts stated herein and could and would competently testify thereto.
2. The City has filed an appeal in this matter and requested the preparation of the reporter's and clerk's transcript on or about July 23, 2015.
3. On August 12, 2015, my office received a copy of the Reporter's Transcript on Appeal and Clerk's Transcript on Appeal.
4. The Reporter's Transcript, however, is missing the transcript from the January 29, 2015 hearing. According to the Humboldt County Superior Court, the court reporter, Ms. Valerie Walker, failed to deliver the transcript as of August 4, 2015. (See Exhibit A – filed by Humboldt Superior Court as part of Reporter's Transcript on Appeal.)
5. On or about August 13, 2015, my office received a notice from the court of appeal setting the briefing schedule.
6. Unfortunately, the City cannot proceed with its appeal absent a complete Reporter's Transcript.

7. My office has contacted the Humboldt County Superior Court and Ms. Walker to inquire about the status of the January 29, 2015 transcript but, no response has been received.

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

Executed this 27th day of August, 2015 at Eureka, California.

  
Cyndy Day-Wilson

# Exhibit A

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IN THE HUMBOLDT COUNTY SUPERIOR COURT  
IN AND FOR THE STATE OF CALIFORNIA  
HON. CHRISTOPHER G. WILSON, JUDGE

IN RE THE MATTER OF:

HORACIO M.,

CASE NO: JV140252

A minor.

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Certified Shorthand Reporter, Valerie Walker, CSR NO. 7209, reported proceedings on January 29, 2015, in the above-entitled matter. Valerie's transcript has not been delivered to the court as of this date, August 4, 2015.



**PROOF OF SERVICE**

I, Danielle Vickman, declare:

I am over 18 years of age, and not party to this action. I am employed by the City of Eureka, 531 K Street, Eureka, California, which is located in the county where the mailing described below occurred. On September 16, 2016, I mailed a copy of the following document:

**CITY OF EUREKA'S LETTER - REQUEST FOR DEPUBLICATION**

To each of the persons named below:

  **X**   **OVERNIGHT DELIVERY.** I enclosed the above-described document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package with overnight delivery fees paid at an office or a location regularly utilized for collection and overnight delivery by an authorized overnight delivery courier.

Chief Justice Tani G. Cantil-Sakauye and  
Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

Honorable Judge Barbara J. R. Jones  
Court of Appeal  
First Appellate District, Division Five  
350 McAllister Street  
San Francisco CA 94102

Honorable Judge Christopher Wilson  
Humboldt County Superior Court  
825 Fifth Street  
Eureka, CA 95501

Mary Blair Angus  
Humboldt County, County Counsel  
825 Fifth Street, Room 110  
Eureka, CA 95501

Paul Nicholas Boylan  
Post Office Box 719  
Davis, CA 95617

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Eureka, California.

Dated: September 16, 2016

/s/ Danielle Vickman  
Danielle Vickman