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7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 THE PEOPLE OF THE STATE OF
CALIFORNIA,

11 Plaintiff,

12 v.

13 MATTHEW STERLING HOUSER,

14 Defendant.

Case No. 19T049326C

RESPONSE TO DEFENDANT'S
MOTION FOR SANCTIONS AND TO
COMPEL DISCOVERY

Date: July 20, 2021

Time: 9:00 a.m.

Dept.: A

Witnesses: 0

Estimated Time: 10 minutes

16
17 INTRODUCTION

18 Counsel for Defendant insists that for infraction cases the San Diego City Attorney has a
19 duty to provide discovery pursuant to Penal Code section 1054. The People insist that the City
20 Attorney does *not* have such a duty and that defendants must obtain discovery from the citing law
21 enforcement agency. In this long-delayed case defense counsel has sought to sanction and compel
22 the City Attorney to provide discovery. This issue was litigated in February 2020 and
23 Commissioner Nadia Keilani ordered *the San Diego Police Department* (SDPD) to provide
24 certain items of discovery, if they existed.

25 SDPD did not provide the material sought by defense counsel and counsel has now filed a
26 duplicative motion for sanctions and to compel the City Attorney to provide the material. Because
27 Commissioner Keilani previously ruled on this issue and ordered SDPD to provide the material
28 sought, the instant motion should be summarily denied. Defense counsel is attempting to seek

1 reconsideration of the February 2020 ruling or to have this Court act as an appellate court and
2 overturn the previous ruling. Either is inappropriate and the motion should be denied.

3 **STATEMENT OF THE CASE**

4 On January 31, 2019, a San Diego police officer observed Defendant camping overnight
5 near 2100 Pan American Way in Balboa Park. The officer cited Defendant for a violation of
6 San Diego Municipal Code (SDMC) section 63.0102(b)(12), camping overnight in a public park.
7 Defendant was released after signing a promise to appear.

8 On March 18, 2019, Defendant was arraigned by his attorney and a not guilty plea was
9 entered. A court trial was calendared for August 8, 2019. On August 1, 2019, on defense motion
10 the trial was continued to November 4, 2019.

11 On November 4, 2019, Defendant appeared by attorney for trial before Commissioner
12 Doft. Defendant moved for the release of documents that had been subpoenaed duces tecum, and
13 moved for dismissal. The motion for release of documents was granted, the motion to dismiss was
14 denied, and an order to show cause against the City Attorney was set for December 10, 2019. The
15 court minutes state: "OSC re: city [attorney] should not be cited for contempt and sanctioned for
16 discovery violations. Court orders San Diego Police Department and San Diego City Attorney's
17 Office to give Ms. Cusack officer's body worn camera footage of incident on CD no later than
18 November 21, 2019." Commissioner Doft retained personal jurisdiction over the case.

19 On November 8, 2019, Commissioner Doft ordered the San Diego Police Department and
20 San Diego City Attorney's Office to provide a copy of the citing officer's body worn camera
21 video footage to defense counsel.

22 On November 21, 2019, Defendant appeared by counsel and moved to continue the OSC.
23 Commissioner Doft granted the motion, continued the OSC to December 30, 2019, and also set
24 trial for December 30, 2019.

25 On December 19, 2019, Defendant appeared by counsel and moved to continue the
26 OSC and trial. A court trial was set for February 20, 2020, and a motion hearing was set for
27 February 4, 2020. Defense counsel filed a motion to compel discovery and to impose sanctions.
28 Commissioner Doft was relieved of personal jurisdiction.

1 On January 28, 2020, the City Attorney's Office filed points and authorities in opposition
2 to Defendant's motion to compel discovery and for monetary sanctions. The points and
3 authorities explained that normally the City Attorney's Office does not appear on or participate in
4 infraction cases and was not the "prosecutor" in the case, and that defendants should request
5 discovery for the citing law enforcement agency.

6 On February 4, 2020, the matter was assigned for hearing to Commissioner Rice. Defense
7 counsel filed a challenge pursuant to Code of Civil Procedure section 170.6 and the matter was
8 reassigned to Commissioner Nadia Keilani. The court took testimony and heard argument.
9 Following the hearing, on February 5, 2020, Commissioner Keilani ordered the San Diego Police
10 Department to produce additional discovery, if it existed. Trial was continued to March 23, 2020.

11 Because of the COVID-19 pandemic the March 23, 2020, trial date was vacated. Trial was
12 reset for August 28, 2020.

13 On August 28, 2020, at the time of trial defense counsel requested that a discovery motion
14 be set in January 2021. The trial was reset for February 24, 2021, and a discovery motion was set
15 for January 21, 2021.

16 On January 21, 2021, defense counsel moved to continue the motion and trial. The
17 discovery motion was reset for July 20, 2021, and the trial was reset for August 19, 2021.

18 On June 28, 2021, defense counsel filed a motion to compel discovery and for monetary
19 sanctions against the City Attorney's Office. Defense counsel also filed a common law motion to
20 dismiss.

21 **STATEMENT OF FACTS**

22 This case was calendared for trial on November 4, 2019. Defense counsel subpoenaed
23 various material from SDPD. Some, but not all, of the requested material was produced. The
24 citing officer's body worn camera video was not produced. At the request of defense counsel the
25 court ordered SDPD and the City Attorney to provide the video.

26 Trial was later set for February 20, 2020, and a motion for sanctions and to compel
27 discovery was set for February 4, 2020. Defense counsel filed a motion and points and authorities
28 in support of the motion, and the People filed points and authorities in opposition to the motion,

1 arguing that normally the City Attorney does not participate in infraction prosecutions and
2 accordingly was not the “prosecutor” within the meaning of Penal Code section 1054.

3 On February 4, 2020, the defense motion was heard by Commissioner Nadia Keilani.
4 After taking testimony and hearing argument Commissioner Keilani denied the motion for
5 sanctions and ordered SDPD to provide certain material, if it existed.

6 SDPD did not provide the material sought by defense counsel. Defense counsel then filed
7 the instant motion for sanctions and to compel discovery against the City Attorney.

8 ARGUMENT

9 I

10 **IF THE COURT ALLOWS DEFENDANT TO LITIGATE** 11 **THIS MOTION THE MATTER SHOULD BE HEARD BY** 12 **COMMISSIONER KEILANI**

13 Defense counsel previously attempted to force the City Attorney to provide discovery,
14 arguing that the City Attorney is the “prosecutor” within the meaning of Penal Code section 1054.
15 This attempt was heard and decided by Commissioner Keilani in February 2020. Commissioner
16 Keilani ruled that SDPD must provide the discovery sought, if it existed. Defendant now seeks to
17 have Commissioner Keilani’s order overruled.

18 As a general rule one trial judge cannot reconsider and overrule an order of another trial
19 judge. *People v. Woodard*, 131 Cal. App. 3d 107 (1982). While there are exceptions to this
20 general rule, such as reconsideration of in limine motions after a reversal on appeal,
21 reconsideration to the same judge who made the initial order in the first trial, or motion to
22 continue to a trial judge because it is the trial judge that assures that a criminal defendant is
23 afforded a bona fide and fair adversary adjudication, are not applicable in this case. *People v.*
24 *Riva*, 112 Cal. App. 4th 981, 994 (2003); *People v. Sherrod*, 59 Cal. App. 4th 1168, 1174 (1997).
25 Here there was no in limine motion, nor was the motion made before a trial judge. The reasons
26 for the general rule include to discourage forum shopping, conservation of judicial resources, and
27 prevention of interference with ongoing cases. *See People v. Superior Court (Scofield)*, 249 Cal.
28 App. 2d 727, 734, (1967); *People v. Clark*, 3 Cal. 4th 41, 119, (1992); *Williams v. Superior Court*
in and for Los Angeles County, 14 Cal. 2d 656, 662 (1939). The proper method to challenge

1 Commissioner Keilani’s ruling would be to appeal or seek a writ, not to try and have another
2 judicial officer play the role of one-judge appellate court. *In re Alberto*, 102 Cal. App. 4th 421,
3 427 (2002); *People v. Superior Court (Tunch)*, 80 Cal. App. 3d 665, 668 (1978).

4 **II**

5 **THE COURT SHOULD DENY THE RENEWED MOTION**
6 **BECAUSE THERE ARE NO CHANGED CIRCUMSTANCES**

7 As discussed above, it would not be appropriate for another judicial officer to hear the
8 instant motion which seeks to have Commissioner Keilani’s order overruled. If, on the other
9 hand, the matter is assigned to Commissioner Keilani to be treated as a motion for
10 reconsideration, it should still be summarily denied.

11 “Generally speaking, courts may correct judicial error in the making of interim orders or
12 in limine rulings until pronouncement or entry of a judgment.” *People v. DeLouize*, 32 Cal. 4th
13 1223, 1231 (2004) (citations omitted). But, there should be good reason for changing the initial
14 ruling, such as recognition that it was indeed legal error or based upon an incomplete or incorrect
15 understanding of the facts. *See, e.g., People v. Nesbitt*, 191 Cal. App. 4th 227, 243 (2010) (wrong
16 statute of limitations period applied). In *In re Kowalski*, 21 Cal. App. 3d 67 (1971), for example,
17 the appellate court pointed out that a motion under Penal Code section 995 ordinarily should not
18 be renewed, even after a mistrial, unless changed circumstances exist bearing on whether the
19 defendant was properly held to answer. In other words, reconsideration without changed
20 circumstances is an abuse of discretion. *Id.* at 70–71; *see also People v. Locklar*, 84 Cal. App. 3d
21 224, 230 (1978).

22 The courts look upon repetitious motions seeking the same relief with disfavor. “[I]n the
23 orderly administration of justice, and in support of a sound judicial policy, a court, in the absence
24 of unusual or changed circumstances . . . is justified, in its discretion, in refusing to consider
25 repetitive applications of the same petition.” *Hagan v. Superior Court of Los Angeles County*, 57
26 Cal. 2d 767, 770-71 (1962); *similarly see Griffin v. Municipal Court*, 20 Cal. 3d 300, 305 n.9
27 (1977). A trial court can threaten a party or attorney with sanctions for making motions
28 duplicative of others already denied. *See People v. Price*, 1 Cal. 4th 324, 395 (1991).

1 In the present case defense counsel seeks to relitigate the motion for sanctions and to
2 compel discovery in the hope of achieving a different result. Defense counsel is not claiming a
3 legal error, or an incomplete or incorrect understanding of the facts, or a changed circumstance.
4 There is no new evidence or changed circumstances alleged in counsel's identical motion.

5 While it is true that SDPD may have failed to comply with the previous order, that
6 circumstance does not go to the issue decided by Commissioner Keilani. If there is a failure to
7 comply by SDPD, defense counsel should seek sanctions against SDPD, not the City Attorney, or
8 seek appellate relief if counsel believes the order is erroneous.

9 Accordingly, Defendant's motion for reconsideration should be denied.

10 **CONCLUSION**

11 For the reasons set forth above, Defendant's motion should be denied.

12 Dated: July 12, 2021

MARA W. ELLIOTT, City Attorney

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14 By 

15 Steven K. Hansen
16 Deputy City Attorney

17 Attorneys for Plaintiff
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Date: July 20, 2021
Time: 9:00 a.m.
Dept.: A

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

DECLARATION OF
ELECTRONIC SERVICE

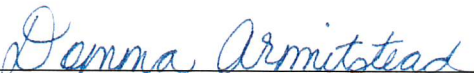
Case No. 19T049326C
People v. Matthew Sterling Houser

I, Donna Armitstead, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned electronic service occurred. My business address is 1200 Third Avenue, Suite 700, San Diego, California, 92101-4103. I served the following document(s): **RESPONSE TO DEFENDANT'S MOTION FOR SANCTIONS AND TO COMPEL DISCOVERY**, to:

Coleen M. Cusack
Ccusack.policy@gmail.com

On July 12, 2021, I transmitted the above-described document(s) by electronic service to the above-listed electronic service address. The transmission originated from my electronic service address darmitstead@sandiego.gov and was reported as complete and without error. [CCP § 1010.6; C.R.C. Rule 2.251.]

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 12, 2021, at San Diego, California.



Donna Armitstead

PROOF OF SERVICE BY ELECTRONIC SERVICE
C.C.P. § 1010.6 and C.R.C. Rule 2.251