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September 16, 2021

SENT VIA U.S. MAIL AND EMAIL

Ellen Leonida—PRA Responses
BraunHagey & Borden LLP
351 California Street
10th Floor
San Francisco, CA
94104

Re: CPRA on behalf of ACLU for Records Relevant to the Implementation of the RJA
(Dated July 23, 2021)

Ms. Leonida,

This letter is in response to your California Public Records Act (CPRA) on behalf of the ACLU for numerous records relevant to the implementation of California's Racial Justice Act, dated July 23rd, 2021. This office emailed you on July 30th, 2021 indicating that we had received your request and that we would conduct a search for any responsible documents and would analyze the propriety of disclosure as quickly as reasonably possible. Thank you for your patience as we worked through your lengthy request.

Below, you will find our responses to your individual requests.

Records Requested by CPRA

1. Any and all written policies, memoranda, or guidance documents regarding:
 - a. Diversion Eligibility and/or programming;
 - b. Custody and/or bail recommendations;
 - c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and or decisions regarding enhancements;
 - ii. Charging recommendations or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decisions regarding wobblers';
 - d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
 - e. Jury Selection;
 - f. Sentencing recommendations;

- g. Prosecution of minors;
- h. Parole recommendations;
- i. Pardon and commutation recommendations;
- j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;
- k. Data collection relating to criminal matters, including demographic data of defendants and victims; or
- l. Referral of cases for federal prosecution.

RESPONSE: All responsive policy documents are contained in the digital folder labeled *Question 1* on the available flash drive. As it relates to your request for memoranda or guidance documents, such documents are exempt pursuant to (1) official information privilege [Cal. Gov. Code § 6254(k), Cal. Evid. Code § 1040], (2) deliberative process privilege [Cal. Gov. Code § 6255, see, 65 Ops. Cal. Atty. Gen. 563], (3) attorney-client privilege/attorney work product [Cal. Gov. Code § 6254(k) incorporating Cal Evid. Code § 952], (4) investigative records [Cal. Gov. Code §6254(f)], (5) Gov. Code § 6254(a) – preliminary drafts, inter-and intra-agency memoranda not kept in the ordinary course of business; (6) Gov. Code § 6254(b) – pending litigation; and (7) that the public’s interest in not disclosing the documents outweighs the public’s interest in disclosure [Cal Gov. Code § 6255].

PLEASE NOTE: The Office Policy Manual for the Placer County District Attorney’s Office is currently in the process of revision through a committee process.

- 2. Any and all policies regarding training as well as any training materials, recorded trainings, or related materials;
 - a. Which are mandatory for prosecutors;
 - b. Which are discretionary for prosecutors;
 - c. Which relate to jury selection;
 - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
 - e. Which relate to the presentation and/or use of evidence of social media platforms and other media.

RESPONSE: The Placer County District Attorney’s Office does not have a “policy regarding training.” As it relates to training materials, recorded trainings, or related materials for trainings which relate to the topics described in (c), (d), and (e), all responsive training materials are contained in the digital folder labeled *Question 2* on the available flash drive.

PLEASE NOTE: In regard to your request in Question 2(a) and (b) for training materials, recorded trainings, or related materials “which are mandatory for prosecutors” or “which are discretionary for prosecutors,” I have interpreted this request as seeking

only records “relevant to the implementation of California’s Racial Justice Act” as articulated in the CPRA.

Additionally, as requested in the CPRA, I have searched for any records which would be responsive to the July 29th, 2019 CPRA related to jury selection and *Batson Wheeler* trainings. That CPRA was received and reviewed by the previous Chief Assistant DA, and no responsive documents were provided. In my search, I located one training which is responsive to the previous request. Responsive records related to that training are contained in the digital folder labeled *Question 2* on the available thumb drive.

3. Records concerning the Racial Justice Act;
 - a. Implementation of and compliance with the RJA;
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA;

RESPONSE: As it relates to category (a) and (b) above, all responsive records are exempt pursuant to the following: (1) official information privilege [Cal. Gov. Code § 6254(k), Cal. Evid. Code § 1040], (2) deliberative process privilege [Cal. Gov. Code § 6255, see, 65 Ops. Cal. Atty. Gen. 563], (3) attorney-client privilege/attorney work product [Cal. Gov. Code § 6254(k) incorporating Cal Evid. Code § 952], (4) investigative records [Cal. Gov. Code §6254(f)], (5) Gov. Code § 6254(a) – preliminary drafts, inter- and intra-agency memoranda not kept in the ordinary course of business; (6) Gov. Code § 6254(b) – pending litigation; and (7) that the public’s interest in not disclosing the documents outweighs the public’s interest in disclosure [Cal Gov. Code § 6255].

As it relates to category (c), all responsive records are contained in the digital folder labeled *Question 3* on the available flash drive.

4. All investigations into *Batson-Wheeler* motions, including, but not limited to:
 - a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or
 - d. Reports to the State Bar relating to any *Batson-Wheeler* motions made or granted.

RESPONSE: As it relates to *Batson-Wheeler* motions filed or granted, this office has no records responsive to these requests. Relating to internal trainings referenced in (c), responsive documents are contained in the digital folder labeled *Question 2* on the available flash drive, as they are duplicative of the materials described in that request. Regarding records of discipline, such records are exempt pursuant to the exemption for personnel, medical or similar records [Cal. Gov. Code §6254(c).] As it relates to the records of reports to the State Bar relating to any *Batson-Wheeler* motions made or

granted, such records are exempt pursuant to the exemption for personnel, medical or similar records [Cal. Gov. Code §6254(c).] Additionally, according to the State Bar website (<http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Lawyer-Regulation?QuestionID=71&AFMID=11077>), "State Bar investigations and inquiries are, by statute, confidential. The complaint becomes public when disciplinary charges are filed against an attorney in State Bar Court. By law, however, any other pending investigations involving the same lawyer must remain confidential at that point. If it is determined that public protection is seriously at stake in a particular case, the Chief Trial Counsel does have the authority to publicly reveal a pending investigation".

As requested in the CPRA, all responsive documents are available in electronic format and have been placed on a flash drive. The cost for the flash drive and all digital content is \$25.00. Once this office receives payment, the flash drive will be mailed to the address contained in the PRA.

If you have any questions or concerns, feel free to contact me.

Sincerely,



David H. Tellman
Chief Assistant District Attorney