

Meet the Sheppard Mullin Litigator Facing Off with California Police Unions Over Misconduct Records

“I think it’s critically important to have this information out there so people can have an informed discussion,” says special counsel Tenaya Rodewald.

By Ross Todd
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Special counsel Tenaya Rodewald and a team at Sheppard, Mullin, Richter & Hampton last week extended an impressive string of wins in California state courts in cases involving access to records of police misconduct and significant uses of force. On Thursday, a trial court in Contra Costa County issued a tentative ruling largely adopting arguments the Sheppard Mullin lawyers made on behalf of pro bono client the First Amendment Coalition about just what sorts of records should be released under SB 1421, a law passed in 2018 that opened certain police records up to disclosure under existing California public records law.

One of the court’s central findings was that police forces shouldn’t withhold records of a “sustained finding” of misconduct or sexual assault by an individual officer due to some negotiated settlement agreement revoking the finding. “If a sustained finding is made, the agency and the officer cannot undo that historical fact by private agreement,” the court held.

Neither the Richmond Police nor the FAC chose to challenge the tentative ruling, meaning it took hold. But Judge Charles Treat has set a further hearing on the matter for next month after the parties have a chance to meet-and-confer about just what must be handed over. In a phone conversation Friday, Rodewald was clearly pleased that the judge had recognized that withholding sustained findings of misconduct could contribute to the problem of “bad apple” officers moving from one agency to the next without proper scrutiny.



Courtesy Photo

Tenaya Rodewald, Sheppard Mullin’s Silicon Valley office will be arguing remotely at Contra Costa Superior.

“Some officers have been able to escape the consequences of misconduct by agreeing with agencies that the sustained finding will be eliminated from their record, then they can move on to another police force and the public doesn’t know,” said Rodewald, who estimates that she and her team had dedicated about 2,000 hours to pro bono police transparency matters since late 2018. “The public doesn’t know that a police officer in their community might have been fired from another community for dishonesty or sexual assault or something else,” she said.

Rodewald said that the work she and her team have been doing has taken on a “new urgency” this summer in the wake of the police killings of George Floyd and Breonna Taylor.

“I think before we were aware there was a problem and everybody knew there was a problem with trust in law enforcement and public frustration with not being able

to understand what was happening with policing. It was a black box, right?” she said. “Certainly the urgency to get [the records] out there and to have them assist with this public discussion that has this immediacy and is involving so much more of the public definitely makes it a bit different.”

Police unions didn’t just sit back after California legislators passed SB 1421 in 2018. First Amendment Coalition executive David Snyder, a Sheppard Mullin alum, says that he and Los Angeles Times General Counsel Jeff Glasser reached out to firm partner **James Chadwick** when a police union mounted a hail mary bid at the end of 2018 to get the California Supreme Court to find that the law only applied to records created after it was set to go into effect on January 1, 2019. When that bid failed, unions across the state sued in attempts to get California trial courts to find that SB 1421 didn’t apply to older records.

Snyder said coordinating effort at the trial courts fell largely to Rodewald, with whom he had previously worked alongside during his time at the firm when successfully defending Mother Jones magazine from a major defamation lawsuit. Snyder said that the assignment required a combination of knowledge of the intricacies of California’s Public Records Act and appellate chops.

“When she really dug in is when we started having to fight county-by-county,” said Snyder of Rodewald. “She’s just done tremendous hand-to-hand combat over the last year-and-a-half with the police unions.”

After Judge Treat in Contra Costa County weighed in early 2019 nixing the police union’s interpretation of the new law’s application to old records, the Sheppard Mullin team got a published opinion in March 2019 from the First District Court of Appeal, an intermediate appellate court in the California system, finding that the unions’ arguments were “without merit.”

“Although the records may have been created prior to 2019, the event necessary to ‘trigger application’ of the new law—a request for records maintained by

an agency—necessarily occurs after the law’s effective date,” the court found.

In another significant appellate ruling in the ongoing fight, the Fourth District Court of Appeal in May found that a trial court in San Diego had abused its discretion when conditioning the participation of interveners, including a group of San Diego media outlets represented by Chadwick, Rodewald and associate **Matthew Halgren**, on striking their requests to recover statutory attorney’s fees.

More recently, the Sheppard Mullin trio took to the offensive this month on behalf of paying client the San Jose Mercury News seeking to force the City of San Jose and its police force to hand over records. According to the newspaper’s petition, city officials have indicated that it could take until October 2023 to fulfill a request for records the paper made when the law went into effect in January 2019. (The Sheppard Mullin team has also included associate **Andrea Feathers** who submitted an amicus brief on behalf of FAC in a case in Ventura County and associate **Gianna Segretti** who has assisted on the cases in Contra Costa County.)

Rodewald, whose paying work also includes intellectual property litigation and privacy consulting, said that while she initially saw her work on the litigation surrounding SB 1241 as representing the media in its role as a representative of the public, it’s become something more.

“The recent events have helped crystalize that it’s not just about the media as much as right now helping to contribute to the broader discussion of how to do policing in the United States and how we as a society oversee policing and regulate it,” she said. “I think it’s critically important to have this information out there so people can have an informed discussion.”

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