

# RLS RAINS LUCIA STERN, PC

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March 16, 2012

**VIA HAND DELIVERY**

Christine Daniel  
City Manager  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

**Re: Chief Michael Meehan/March 9, 2012 Incident**

Dear Ms. Daniel:

This office is legal counsel to the Berkeley Police Association (hereinafter referred to as "BPA"). We advise the BPA in all matters related to collective bargaining and represent individual BPA members in grievances and disciplinary matters. Our firm has been proud to represent the men and women of the BPA for many years, and have enjoyed a very productive and professional relationship with the City and the Police Department Administration. Moreover, the BPA has worked collaboratively with the City to represent its members who serve the citizens of Berkeley with pride and professionalism.

As you are aware, during the early morning hours of Friday, March 9<sup>th</sup>, Chief Meehan directed Sergeant Mary Kusmiss to contact a reporter at his private residence regarding media accounts of the ongoing investigation into the death of a Berkeley citizen. The media has reported some of the details surrounding this event. Sergeant Mary Kusmiss has served the citizens of Berkeley in an exemplary fashion for many years. She has distinguished herself within the City, Department, and her profession at many levels, and is one of the most hardworking and dedicated employees of the City of Berkeley. Unfortunately, as has been documented by the local and national media, Chief Meehan's orders to Sergeant Kusmiss to approach the reporter have shaken the foundation of the Police Department and embarrassed the members of the BPA who serve their community in an exemplary fashion.

In response to this incident, the BPA issued a public statement expressing their collective outrage and concern over the Chief's order to Sergeant Kusmiss. In addition, the reporter involved in the incident has made his feelings known concerning his own dismay over the entire affair, citing subsequent panic attacks over the official police visit at 12:45 a.m.

Christine Daniel, City Manager

**Re: Chief Michael Meehan/March 9, 2012 Incident**

March 16, 2012

Page 2

The media accounts and the Chief's own admissions and subsequent apologies to various members of the Police Department seem to confirm that the order to Sergeant Kusmiss was not only inappropriate, but in violation of professional standards.

The Berkeley Police Department, through its Chief of Police, has been eager to investigate and discipline officers while espousing zero tolerance at many levels for violations of policy and procedures. Moreover, the Chief of Police has demanded that the members of the Police Department perform at the highest levels and constantly insists that accountability be a necessary component to the delivery of police services to the citizens of Berkeley.

The BPA had assumed, perhaps incorrectly, that the apparent egregious nature of the Chief's admitted conduct would result in an investigation. It is appalling that the City of Berkeley has seen fit to simply allow this incident to slide into a media graveyard without further examination or review. Based on the reported public comments by City officials it is abundantly clear that the Chief's mea culpa has afforded him a "free pass." There has been no indication from the City that further inquiry or investigation is forthcoming. The City's unwillingness or inability to act has prompted the BPA to demand action by the City.

In effect, the lack of action by the City has created a de facto double standard for conduct in the Police Department. There is no doubt that, had any sworn member of the Department (other than the Chief of Police) ordered a member of the Department to contact a reporter under the same conditions, that member would not only be investigated, but likely be put on administrative leave and be subject to discipline. Police officers are never given a "free pass" from investigations and discipline involving serious matters if they simply apologize for their behavior. Absent further actions by the City, police officers involved in misconduct will have every right to be given a "free pass" from alleged misconduct based on the disparate treatment evidenced by this matter.

The failure to conduct an investigation in this matter reflects negatively not only on the members of the Police Department, but also the City at large. The members of the BPA appreciate the rich tradition and history of the free speech movement and protection of civil liberties that have been the hallmark of the City of Berkeley. This incident and lack of appropriate response has demonstrated a level of indifference one would never have imagined from Berkeley.

After much deliberation, the BPA formally requests the City of Berkeley retain an independent outside investigator to conduct an inquiry into the conduct of the Chief of Police regarding the incident referenced above. Based upon the facts as reported in the media, and personal statements made by the Chief of Police to the members of the Police Department, it is apparent that there may be sufficient grounds to sustain a finding of numerous Police Department policy violations. The BPA is not interested in a rush to judgment; however, based upon the

Christine Daniel, City Manager

**Re: Chief Michael Meehan/March 9, 2012 Incident**

March 16, 2012

Page 3

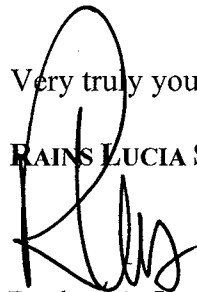
Chief's admissions and reported facts we believe that various Department policy violations may have occurred, including but not limited to (1) misconduct/supervisory and command officer responsibility; (2) reporting misconduct; (3) general responsibilities of officers and employees; (4) courtesy; (5) acts – statements by employees; and, (6) function of the Chief of Police.

The BPA has great admiration and respect for the office of the Chief of Police. This demand for an investigation is not one that was borne in the immediacy of the moment. For several days, the membership of the BPA has struggled with the appropriate course of action in this matter. All of us had truly hoped that the City would do the right thing and initiate an independent review of this matter. Sadly, such was not the case.

Finally, we trust and fully expect that your office will take the appropriate action to ensure that the rules of conduct are applied equally to all members of the Police Department. In light of the serious nature of this matter, we would appreciate a response from the City within seven (7) calendar days of the date of this letter. Thank you for your time and consideration and I look forward to hearing from you.

Very truly yours,

**RAINS LUCIA STERN, PC**

A handwritten signature in black ink, appearing to read 'RAL', is written over the typed name 'RAINS LUCIA STERN, PC'.

Rockne A. Lucia, Jr.

RAL:jpg

cc: Tim Kaplan, President  
Berkeley Police Association