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April 24, 2017

**VIA HAND DELIVERY**

District Attorney Tony Rackauckas  
401 Civic Center Drive West  
Santa Ana, CA 92701  
Tony.Rackauckas@da.ocgov.com

**Re: AOCDS/INTERROGATION WITHOUT REPRESENTATION**

Dear District Attorney Tony Rackauckas:

I am General Counsel for the Association of Orange County Deputy Sheriffs (“AOCDS”), and I have been retained by AOCDS in regards to the above-referenced matter.

It has come to the attention of AOCDS that the District Attorney’s Office (“DAO”) has issued an order to AOCDS members (some of whom may have testified to the Grand Jury) to attend an “information gathering interview”. Amazingly, our members were informed that as witnesses, they are not entitled to representation during this interrogation.

This is problematic for a number of reasons. First, it is clear that what is said by our members can be used as a basis for discipline. The possible circumstances surrounding the interview (the actions taken against two key members of management on April 24, 2017) indicate that the questioning in the instant matter can only be characterized as part of an investigation of sanctionable conduct. As such, the Public Safety Officers Procedural Bill of Rights Act requires that these members be given representation should they desire it and cannot be dissuaded from exercising their right to representation.

Government Code section 3303(i) provides in pertinent part that: “... whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation.”

Can the DAO confirm in writing that nothing that is said by our members during the interrogation may be used as a basis for discipline? If not, then these members must be afforded a representative of their choosing. The failure to allow for representation will result in the suppression of any statements made at the interrogation, together with all evidence flowing from the questioning in any subsequent proceedings. (*City of L.A. v. Superior Court*, 57 Cal. App. 4th 1506 (Cal. App. 2d Dist. 1997).)

In addition, the DAO must follow the law as it relates to Grand Jury investigations. A California Grand Jury has authority to admonish witnesses appearing before it not to reveal what questions were asked or responses given or other matters concerning the nature or subject of the Grand Jury's investigation which the witness learned during his or her Grand Jury appearance unless and until such time as the Grand Jury transcript is made public and except as directed by the court. **A violation of such an admonition is punishable as a contempt of court.** (66 Ops. Cal. Atty. Gen. 85; 86 Ops. Cal. Atty. Gen. 101.)

Accordingly, any questions at the interrogation should avoid Grand Jury testimony. Compelling a member to disclose that the member attended the Grand Jury proceeding is entirely improper as it would force the member to engage in an act of contempt of court. Further, such questions could arguably be viewed as coercion and/or intimidation of a Grand Jury witness, thereby interfering with and/or obstructing the Grand Jury process.

Please contact the undersigned with any questions.

Sincerely,



Adam E. Chaikin, Esq.  
Partner

cc: Lead Commander Ron Seman  
Senior Assistant DA Mike Lubinski