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CLIENT ALERT MEMORANDUM

To: All Sheriffs & Chiefs of Police

From: Martin J. Mayer, Esq.

LAW ENFORCEMENT TRAINING IS MORE IMPORTANT THAN EVER

The claim of negligent training is one of the most common claims against law enforcement, especially in federal civil rights lawsuits. In order to defend against such claims it is necessary to prove that appropriate training in the relevant areas had been provided.

Civil rights litigation is based on 42 U.S.C. § 1983 which states, in part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

Almost forty years ago, the United States Supreme Court ruled, in *Monell v. Department of Social Services*, 436 U.S. 658 (1978) that a "*local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents*. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government, as an entity, is responsible under § 1983." (Emphasis added.)

Furthermore, the Court noted that, "Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that *Congress did intend municipalities and other local government units to be included among those persons to whom § 1983 applies.* Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." (Emphasis added.)

"Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, *local governments*, like every other § 1983 "person," by the very terms of the statute, *may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decision making channels."* (Emphasis added.)

Negligent Training

As recently as 2008, an article appeared in the Police Chief magazine, the publication of the International Association of Chiefs' of Police (IACP), authored by John M. (Jack) Collins, General Counsel, Massachusetts Chiefs of Police Association, addressing the issue of negligent training.

The article starts with the statement that "a chief is likely to be added as a party to any civil rights lawsuit that results from alleged wrongdoing by that chief's police officers, regardless of whether the chief had any direct involvement in the officers' conduct. ***One of the most common claims is that the chief was negligent in training the officers and that this failure resulted in the violation of a citizen's civil rights."*** (Emphasis added.)

As Collins notes, "In *City of Canton* v. *Harris*, 489 U.S. 378, 390 (1989), the U.S. Supreme Court held that to establish municipal liability, evidence must exist that illustrates that 'the need for more or different training is so obvious . . . that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.' The Court suggested that simply demonstrating that an injury could have been avoided if more training had existed was not enough to attach municipality liability. Moreover, '*City of Canton* requires not only deliberate indifference but that the alleged failure to train be shown to have been the 'closely related' cause of the constitutional injury.' The *Harris* Court explained that the alleged training deficiency must essentially be the *moving force* behind the injury."

Collins also makes the point that "(i)n addition to any legally mandated training, chiefs must make an effort to secure training for officers in areas that the chiefs know or should know will result in civil rights violations without such training. Continued adherence to an approach that the municipality knows or should know has failed to prevent tortuous conduct by employees may establish the conscious disregard for the consequences of their actions - deliberate indifference - necessary to trigger municipality liability."

Level of Training for California Law Enforcement

The level of training provided to California law enforcement has, historically, been a "gold standard." During these most tumultuous times, that cannot change but, as one whose law firm represents police and sheriffs' agencies, reductions in training funds raises serious concerns.

As of this date, California's Commission on Peace Officer Standards and Training (POST) will have to absorb a reduction in its 2015/2016 budget in the amount of $5.2 million dollars.

It is commonly accepted that training must be provided in subjects such as the use of

force, use of deadly force, high speed pursuits, interactions with the mentally impaired, and prevention of bias, to name just a few. Those, among other modules, are part of California's mandatory training requirements for law enforcement.

However, in light of incidents which have occurred over the past year, throughout the country, in places as diverse as Ferguson, Cincinnati, Los Angeles, and New York, we have seen newly designed forms of training start to emerge.

For example, as reported in the Los Angeles Times on August 21, 2015, there is a new emphasis in training identified as "protection over suppression, patience instead of zero tolerance." The article notes that "after decades of training that focused mostly on firearms and force, agencies from Seattle to New York are introducing what they call de-escalation training, which looks at ways officers can reduce tension and potentially avoid using force during encounters with the public."

This type of training has already been implemented by the Los Angeles Police Department, once again showing that California is usually ahead of the curve on many issues involving law enforcement. But a reduction in funding may impede the implementation of such training in other agencies which cannot afford it on their own.

The $5.2 million dollar reduction in funding is being accomplished, in part, through the loss of several staff members at POST, and by continuing the suspension of backfill reimbursements to law enforcement agencies, already in effect. It is hard to imagine that such reductions will not adversely affect training of officers at the local level, including the implementation of new types of training such as that set forth above.

In January, 2009, JONES & MAYER issued a Client Alert Memo entitled **"**The Duty To Train Officers Is Unaffected By The Lack Of Reimbursement Sources" and that has not changed.

Even with significant cutbacks by the state in providing reimbursement for training, the responsibility to provide adequate training is still a duty of the law enforcement agency; that responsibility is created by statute and case law. Hopefully, the ongoing need for adequate training will be recognized by those who fund such training and it will be restored.

As always, should you wish to discuss this matter in greater detail, please feel free to contact me at (714) 446 – 1400 or via email at mjm@jones-mayer.com.

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