

LABOR/EMPLOYMENT • Dec. 15, 2005

## **Police Lawyer Sees Suit Over Suspensions**

**He Says S.F. Broke The Law in Discipline Related to Videos**

**By Robert Selna**

Daily Journal Staff Writer

Lawyers for the San Francisco police officer suspended for making controversial videos threatened to take legal action Wednesday, saying the city is breaking the law by suspending officers without pay.

Mike Rains, an East Bay lawyer who represents police officers in employment disputes, convened a press conference at City Hall on Wednesday afternoon. Earlier Rains told the Daily Journal that he had met with police officials and his client, Andrew Cohen, and he had shared with them his belief that the suspensions without pay are illegal.

In the interview, Rains said that suspending Cohen and other officers, while depriving them of their pay before a hearing regarding the video amounted to a "taking" of property under California and U.S. Supreme Court case law. Rains said he wanted to give the city an opportunity to review the law and respond before he files a lawsuit.

### **Detailed Letter**

"I've given the city a letter setting out in detail the legal points associated with this suspension, and I met with police representatives, and I look forward to the city taking a serious look at the issues raised and rethinking these suspensions, because thus far, they've been inappropriate," Rains said.

No representative from the San Francisco Police Department's legal department was available for comment by press time.

At a joint press conference on Dec. 7, Police Chief Heather Fong and Mayor Gavin Newsom played Cohen's video segments for reporters, calling them racist and sexist.

One clip features an officer appearing nonchalant about running over a black homeless woman; another shows two officers ignoring radio dispatch calls and instead entering a massage parlor; and a third portrays an officer pulling over a blonde-haired female motorist and requesting that she turn around so he can inspect her figure. Many of the scenes show officers wearing their uniforms and driving department vehicles.

### **Mayor's Response**

Newsom said the videos were demeaning and criticized officers for using city time to make them. He has since said that Cohen made other videos that are even more offensive. Fong suspended 24 officers without pay. Eight reportedly have been allowed to return to work.

Informed of his suspension, Cohen, 39, retained his friend and East Bay criminal defense lawyer Daniel Horowitz. Cohen and Horowitz went on national television and defended Cohen as an "artist" who made the videos to boost the morale of officers around the holidays.

Horowitz vowed to sue the city for slander, but instead he has taken a back seat and asked Rains to represent Cohen's legal interests.

Rains said the law dictates that with rare exceptions, a government employer cannot take away a police officer's pay without notice and an opportunity for the officer to explain his or her actions.

"You just can't engage in a summary taking without due process," Rains said. "Only in very serious misconduct cases - felonies or egregious conduct - can the state suspend someone without pay." He cited two cases, *Skelly v. State Personnel Board*, 15 Cal. 3d 194 (1975), and *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), as precedent.

Police spokesman Neville Gittens directed a reporter to review the San Francisco Police Department General Order section on disciplinary procedures. In that section, suspension is defined as follows: "time off without pay imposed by the Chief of Police or by the Commission after a hearing."

Cohen said in an interview that he was suspended Dec. 7 and his first opportunity to explain himself was Wednesday. He has said that Fong and Newsom were using the videos for political advantage in a city that has become too politically correct.

At the press conference Wednesday, Rains said Cohen was "sick and had not slept" because of the video scandal and said Cohen hopes that he and his fellow suspended officers could go back to work.

Asked what he would do if the Police Department did not respond to his letter, Rains quipped, "See you in court."