

November 9, 2001 Friday

SECTION: NEWS; Pg. 1

HEADLINE: TO PROTECT AND SERVE

BYLINE: BY Jahna Berry; RECORDER STAFF WRITER

BODY:

When the East Bay's women and men in blue are in hot water, the phones at Rains, Lucia & Wilkinson start ringing.

The eight-lawyer Pleasant Hill firm - which is staffed by several cops who became attorneys - represents officers in internal disciplinary cases and in criminal trials. While Rains, Lucia handles a range of legal work for police unions, it's the criminal trials - which are primarily handled by name partner Michael Rains - that get the most attention.

Rains, Lucia was on the legal team that persuaded jurors in 2000 to acquit eight Corcoran State Prison guards accused of violating prisoners' rights, and Rains represented a prison guard who shot an inmate involved in the case. Rains also defended a Santa Clara County deputy sheriff who was sentenced last week in a sexual battery case. And his firm is representing two rookie Oakland police officers who accidentally shot and killed an undercover cop in a lawsuit filed by the dead man's family.

"Clearly they are among the best and the most reputable" of such firms, said San Jose city attorney Richard Doyle, who dealt with the firm during his tenure as Concord's city attorney.

Now, Rains is back in the spotlight. He leads the defense team, which includes Petaluma solo Edward Fishman and San Mateo attorney William Rapoport, that is representing three Oakland police officers who called themselves the "Riders."

In the trial, which is expected to begin in the spring, former Oakland police officers Clarence Mabanag, Jude Siapno, Matthew Hornung and Francisco Vazquez are accused of planting evidence, beating suspects and lying in police reports. Authorities believe that Vazquez fled the country.

Prosecutors are still reviewing cases that relied heavily on police reports or testimony from the accused former officers, said Alameda County Deputy DA Ann Diem.

So far 82 of the cases have been dismissed or are scheduled to be dismissed, she said.

Rains, Fishman and Rapoport also represent the cops in a pending federal suit, *Allen v. City of Oakland* C00-4599, filed on behalf of more than 70 plaintiffs who say that they were victims of the officers.

The city refuses to pay legal fees for the former officers in the civil suit. Rains is considering whether to sue the city - which traditionally pays for such legal expenses for employees - to make it pay his fees. However, if the city decides to settle with the alleged Rider victims, the issue of Rains' fees for representing the individual officers could become moot.

If Oakland - the deep pocket in the case - settles, it's unlikely that the plaintiffs will pursue the individual former officers in court. A police legal defense fund, which has footed the civil legal bill, could decide that it doesn't want to sue the city to recoup what it's paid so far, Rains said.

In the upcoming criminal trial, Rains has said, he plans to show that the officers were trying to enforce the department's goals to cut drug crime.

But the Rider defense team may have already made a serious error during the preliminary hearing by putting a witness on the stand that may have hurt its case.

Edward Fishman, the attorney for accused Rider officer Hornung, called on Oakland police officer Alexander Conroy to refute earlier testimony that the officer engaged in misconduct.

According to the transcript, Conroy testified that he was present at two drug busts that were being questioned by prosecutors, and that they were done lawfully. However, when prosecutor David Hollister, an Alameda County prosecutor working on the Riders case, questioned Conroy, the officer acknowledged that his version of the events conflicted with the reports that he and the accused officers wrote. When Hollister asked why one man was arrested during a bust but others in a crowd of suspects were allowed to go free, Conroy replied, "bad luck."

A source familiar with the case said Conroy was placed on administrative leave after he testified. The Oakland Police Department and the city attorney's office declined to comment about the Conroy case because it's a personnel matter.

Defense lawyers rarely have witnesses testify at prelims because it gives prosecutors a preview of their game plan, veteran criminal attorneys say.

"When you put on a witness, you have to put them on with some idea that they will be a truthful witness and add something to the case," Hollister said.

Fishman declined to comment about Conroy. Rains said Fishman felt the officer had a shot at swaying the judge as a persuasive defense witness. Conroy was a strong witness, Rains insists.

"If you believe a lot of what he says, he gives solid testimony that undermines (Keith) Batt," said Rains, referring to the rookie officer who alerted authorities about the Riders.

Rains said that if Conroy has been disciplined, it could have a chilling effect on other officers who may fear they will have a similar fate if they become defense witnesses.

Lawyers who have opposed Rains in other criminal cases say he is a tenacious litigator.

"He is a very good attorney," said Hollister. "He has a strong courtroom presence"

"He certainly fights hard for his clients," said James Cahan, a Santa Clara County prosecutor who faced Rains in the case of the South Bay deputy sheriff, Glen Dolfin, who was accused sexual battery.

Rains went to the mat on evidentiary motions, and at times used an emotional, sermonlike delivery in front of the jury, the lawyer said.

"It was pretty unique," said the prosecutor of Rains' oratory style. "He is very well spoken and a passionate speaker."

The officer was acquitted of simple battery and convicted of misdemeanor sexual battery. Dolfin was sentenced to 30 days in jail and must register as a sex offender.

Rains, Lucia was founded in 1999 when Rains, Rockne Lucia Jr. and Alison Berry Wilkinson, three longtime Carroll, Burdick & McDonough attorneys, split off from Carroll, Burdick.

The Rains, Lucia lawyers attribute the split in part to Carroll, Burdick beginning to represent employers. They say that created a conflict for the Carroll, Burdick lawyers who represent employees. One of those employee groups, the Peace Officers' Research Association of California, was one of Carroll, Burdick's "top four or five" clients, he said.

Ronald Yank, the head of Carroll, Burdick's labor group said Carroll, Burdick continues to represent employee groups and noted that the firm's labor practice is "still very active."

Yank speaks highly of the Rains, Lucia lawyers. "When it comes to defending public employees, there is no better team," he said.

Since the group split from Carroll, Burdick, Wilkinson said, the firm has grown to represent 80 labor associations. It also has plans to open offices in Sacramento and San Rafael.

"We have grown considerably," said Wilkinson, managing partner of the firm.

The firm's client list includes the PORAC and the California Correctional Peace Officers Association as well as unions that represent officers in the Oakland, Concord, Antioch, Richmond, San Leandro, Pleasanton, Berkeley, Alameda and Walnut Creek police departments.

"They are very thorough," said Benjamin Sybesma, chief counsel for the correctional officers association.

Sybesma, who has worked with Lucia and Rains since their Carroll, Burdick days, assigned the firm to the Corcoran case.

"They have a great deal of empathy" for officers, he said.

That may be because six of Rains, Lucia eight lawyers have worn a badge.

Rains was a Santa Monica police officer. Others have worked for Berkeley, Santa Rosa and Oakland police departments as well as for the Contra Costa sheriff's office.

"There is an issue of trust," said Ralph Hughes, a Pleasanton lawyer who works for police agencies. Former cops "speak the same language," explained Hughes, a former police officer.

"You have to have been in their position."

Reporter Jahna Berry's e-mail address is jberry@therecorder.com.

LOAD-DATE: November 9, 2001