

August 16, 2013

Joseph W. Rose
Rose Law
11335 Gold Express Drive, Suite 135
Gold River, CA 95670

Re: *Police Officers of California/California Statewide Law Enforcement Association*

Dear Mr. Rose:

This office represents CSLEA. I have reviewed your August 5, 2013 and August 14, 2013 letters to CSLEA's Chief Legal Counsel, Kasey Clark, regarding CSLEA's August 2, 2013 website posting entitled "POC Attorney Abandons Founding Officer/Director On Lawsuit Challenging Termination." As detailed herein, CSLEA will not retract the posting as the content constitutes protected speech. Further, CSLEA has authorized our office to take appropriate legal action in the event POC or its counsel takes further action to chill CSLEA's free speech, including seeking attorneys' fees and costs under Code of Civil Procedure section 425.16.

As you are aware, CSLEA and the POC are in an ongoing dispute regarding representation of California peace officers. As POC's counsel, you have inserted yourself into this dispute. Earlier this summer, POC contacted several CSLEA members requesting that they join POC's campaign to decertify CSLEA as their bargaining unit representative. In response to this campaign, CSLEA published information on its website to educate its members about POC's efforts and how the majority of members' interests will be adversely impacted if POC is successful in its decertification attempt.

POC's Legal Defense Plan, which you administer, is a fundamental component in this dispute, and former peace officer Brandon Shoemaker's¹ case highlights one of the principal reasons why CSLEA members should not be swayed into joining POC's campaign. Mr. Shoemaker, a founding member and former treasurer of POC, challenged the decision to terminate his employment because he believes his termination had been wrongful. Based upon the Writ for Administrative Mandamus filed by your office, Mr. Shoemaker alleged that the decision by the Personnel Board judge was not supported by the evidence. However, the public record reflects that Mr. Shoemaker was not able to pursue his writ petition as a Substitution of Attorney was

¹ In your August 14, 2013 letter, you refer to a "Mr. Leibrock." I assume this is a remnant from a previous letter and is not relevant to this response.

filed by your office in which he substituted himself *in propria persona*. He later dismissed the action without filing any further pleadings pursuing his writ remedy. It was clear from this public record that the POC "legal defense plan" failed to provide an adequate legal defense for Mr. Shoemaker.

In your letters, you assert that the Plan did not "abandon" Mr. Shoemaker and you attach a declaration from Mr. Shoemaker in which he claims the reasons for dismissing his lawsuit "are personal to [him]." However, after 30 years of legal practice, it is not difficult to read the legal tea leaves here: Mr. Shoemaker did not pursue his claims because he did not have the financial ability to pursue his claim on his own and POC's "legal defense plan" was inadequate to provide the necessary resources to support his writ to its final conclusion. In view of this information, CSLEA reasonably reached this same conclusion that the problem here was not with Mr. Shoemaker's case for a remedy, but the absence of the legal resources to pursue that remedy.

Nothing in your letters or Mr. Shoemaker's declaration contradicts this conclusion as Mr. Shoemaker's declaration avoids this issue of the lack of financial resources to pursue his writ to its natural conclusion. *See Summit Bank v. Rogers*, 206 Cal.App.4th 696, 700 ("statements that the Bank was mismanaged and rendered poor service and that the Bank's depositors would be well advised to move their accounts 'before its [sic] too late' and 'before they close' do not imply a provably false factual assertion to form the basis for a defamation action" and are "[i]nstead . . . nonactionable opinions").

More importantly, even if the statements in CSLEA's posting were not opinions, they are nevertheless protected by the common interest privilege, which provides that a communication to a person with common interest by one who is also interested is privileged. Civ. Code 47(c). Here, CSLEA shares a common interest with its members – bargaining unit representation that preserves their benefits. If a founding member of POC is unable to secure adequate benefits through POC's Legal Defense Plan, other CSLEA members should not expect more favorable treatment. CSLEA's postings to its members are, therefore, privileged communications.

In the event POC or your office attempts to chill CSLEA's free speech rights, CSLEA will respond with an anti-SLAPP motion and will seek all attorneys' fees and costs incurred in doing so. *See* Code Civ. Proc. § 425.16 ("a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs"); *see also Chaker v. Mateo*, 209 Cal.App.4th 1138 (2012) (anti-SLAPP motion granted, and plaintiff's complaint stricken, where plaintiff filed defamation lawsuit based on website statements by defendant that others should be "scared" and "careful" when dealing with the plaintiff, that the plaintiff was "a criminal and a deadbeat dad" who used steroids and was "into illegal activities," among other affirmations).


Finally, CSLEA will not remove Mr. Shoemaker's name or picture from the posting. If POC or its counsel were concerned about Mr. Shoemaker's private information, that information should not have been included in the substitution of attorney form filed with the court. If Mr. Shoemaker was concerned about disclosing his home address, he could have used a P.O. Box or

used an address that was not his home address. Likewise, Mr. Shoemaker cannot seriously challenge the publication of his photograph on the CSLEA website. This photograph was obtained online by simply Googling Mr. Shoemaker's name. He posted this picture online when he ran for the California Assembly in which he proudly displays his peace officer background. CSLEA simply posted the same photograph on its website that Mr. Shoemaker used when he ran for public office.²

If you have any questions about this matter, please contact me.

Very truly yours,

DOWNEY BRAND LLP



Daniel J. McVergh

Cc: Kasey Clark

² The picture used in the posting can be found here:
<http://www.reedleyexponent.com/articles/2010/09/15/news/doc4c9155a8aa886103099148.txt>