

## OFFICER PREVAILS IN “FREEWAY THERAPY” RETALIATION CASE

By: Michael A. McGill, Esq.

In March 2010, Santa Barbara County District Attorney Investigator Rick Prancevic was punitively transferred from one county office to a different office, much further away from his home. The transfer was the result of a letter to the editor Prancevic wrote in a local newspaper criticizing the City of Santa Maria’s chief of police, Danny Macagna. To put it nicely, the letter articulated Prancevic’s opinion on how the chief was performing and whether he was actually taking steps to keep the city safe.

The chief, who has a history of bullying and retaliation, and has since been separated from his position, became outraged that an officer in his county would publicly challenge him. He thereafter “banned” Prancevic from entering Santa Maria Police Department property, including any portion of the public lobby. The ban extended to Prancevic in his capacity as a peace officer and in his personal capacity as a citizen. Worse, the ban did not take into account the fact that Prancevic may actually need to enter the property for law enforcement assistance as a citizen.

In response to the chief’s ban, Prancevic’s employer, the County, its Chief Investigator for the District Attorney’s Investigative Unit, David Saunders, and the acting District Attorney compounded the matter by punitively transferring Prancevic from his office. In attempting to justify its decision, the County claimed that the transfer was necessary because the ban prevented Prancevic from performing his job functions. The County took this action without seeking any input from Prancevic, conducting any investigation, and more importantly, failing to consider his First Amendment rights.

As a result of his transfer, Prancevic sought legal representation from Adams, Ferrone & Ferrone and a federal civil rights lawsuit was immediately filed alleging that the punitive transfer violated Prancevic’s First Amendment right to Free Speech. The case was filed against the city’s police chief, as well as Prancevic’s employer, the County. The case was unique in that it involved a key defendant—the chief—who was not the employer. In fact, the chief claimed he didn’t employ Prancevic, and he could not be responsible for any actions his employer took against him. The County claimed they were not responsible because they didn’t impose the ban, and were simply dealing with the impacts of the ban—whether it was lawful or not.

At deposition, a high ranking member of the District Attorney’s Executive Team testified that it appeared the decision was made more to punish Prancevic for his letter than to deal with any purported inability to perform job functions. In addition, that same witness testified that it was a running joke that such transfers were used as freeway therapy in order to punish someone for something. Ultimately, the County’s claim would fail, as the evidence demonstrated that Prancevic had rarely if ever even had to go to Santa Maria Police Department in his investigator capacity.

After extensive discovery and depositions, the defendants all filed motions for summary judgment, asking that the court justify and excuse their actions and that the case be dismissed. Ultimately, the court ruled against the defendants, and issued an important decision, finding that the chief could be liable for setting in place an action that causes an employer to take an adverse action against an employee. This decision is important because it means that a non-employer can potentially be liable for their actions that result in negative employment decisions. The defendants thereafter filed an emergency appeal, asking that the Ninth Circuit intervene and dismiss the case. Instead, the Ninth Circuit correctly affirmed the lower court's holding and the matter was set for trial.

However, while the matter was on appeal, the city's chief of police suddenly retired in the wake of numerous other public scandals, and the city immediately lifted the ban. And with the "ban" lifted, the County reversed its transfer, and returned Prancevic to his proper office. With the transfer rescinded, the parties, absent the chief who largely caused the problem, came together and reached an amicable solution. Prancevic received damages in the amount of \$225,000, which largely accounts for the deprivation of his First Amendment rights. Mr. Prancevic is ecstatic with the outcome and would like to thank Adams, Ferrone & Ferrone and his attorney Michael McGill for helping him throughout his ordeal.

**ABOUT THE AUTHOR:** Michael A. McGill is an attorney with Adams, Ferrone & Ferrone, specializing in representing peace officers and their associations in all labor and employment related matters. Mr. McGill represented Mr. Prancevic in all aspects of his case.