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February 18, 2009

Facsimile - 713-529-3785

Geoffrey Berg
Berg & Androphy
3704 Travis Street
Houston, Texas 77002

Re: Robert Tolan v. City of Bellaire and Bellaire Police Department

Dear Geoffrey:

I have reviewed a copy of your letter of February 3, 2009 to Detective Bohannon regarding your clients' refusal to participate in the Police Department's internal investigation of the incident of which are clients have complained. I have dictated a separate letter related to that issue which I will forward to you shortly.

However, I note that you and your clients have been very vocal with the media regarding your thoughts and opinions, regardless of the fact that they cannot be substantiated, related to this incident. I am advised that, beyond the media attention which you and your clients have solicited thus far, you have scheduled a press conference, to which you have expressly invited members of the media, later today.

Much of what you, particularly, and your clients to some extent, have said seems to be insupportable, baseless, and, most importantly, likely to be both inadmissible and prejudicial in connection with the lawsuit your clients have reported, and you and your father have told me, they intend to file. Accordingly, such statements, and particularly many of those made by you and your co-counsel, appear quite clearly to run afoul of Rule 3.07 of the Texas State Bar Rules of Professional Conduct.

Obviously, your clients have a right to pursue litigation if they choose and the city and individual officers will, if sued, respond and, in accordance with the rules of evidence, demonstrate that no constitutional violation occurred and none was caused by any city policy. However, to the extent that you or your co-counsel or your clients, at your behest, continue to seek out media opportunities to make statements which violate the Rules of Professional Conduct, and which clearly have the significant potential to prejudice a potential jury member or panel, you will likely be responsible for such irresponsible action.

Geoffrey Berg
February 18, 2009
Page 2

To the extent that you, your co-counsel or your clients, at your suggestion or based upon your advice, wish to continue to attempt to "try their claims in the media," without regard to the fact that most of what you and they have said thus far is baseless, unprovable and would certainly be inadmissible in court, you and your co-counsel should confine yourself in the future to the types of limited statements permitted under the applicable Rules.

Sincerely,



William S. Helfand

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